DRAFT AGREEMENT SUBJECT TO RFP SECTION 6.6

AGREEMENT

TO DESIGN, BUILD, OWN AND OPERATE THE
WASTE REDUCTION & RECYCLING PROJECT

Between

THE CITY OF CLEVELAND

And

_____

Dated: _____

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To be determined

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This Waste Reduction and Recycling (WR&R) Services Agreement ("Agreement") is made and entered into as of this ____ day of _____, 2014 between The City of Cleveland, a municipal corporation of the State of Ohio (the "City"), through its Director of Public Works ("Director"), under the authority of Ordinance No. _____, passed by the City's Council on _____ and Resolution No. _____, adopted by the City's Board of Control on _____, and _____, a [type of entity] organized and existing under the laws of the State of _____ and authorized to do business in the State of Ohio (the "Company"), through its duly authorized officer by its Board of Directors.

RECITALS

WHEREAS, the City approved a Waste Reduction & Recycling ("WR&R") Project that provides for, among other things, the development and implementation of a comprehensive municipal solid waste ("MSW") management infrastructure that provides for the use of MSW for the recovery of Recyclables and production of an engineered fuel ("MSW-EF"); and

WHEREAS, the City desires to implement a MSW disposal strategy by obtaining all professional and other services necessary to develop a Materials Recovery Facility ("MRF") for processing MSW, recovering Recyclables and organics, processing organics by anaerobic digestion ("AD") or other technology, producing MSW-EF, and diverting MSW from landfill operations; and

WHEREAS, the City issued a Request for Proposals for the procurement of specified services to design, permit, build, own, and operate a MRF for the WR&R Project services (the "RFP"), dated April 29, 2014, attached as Exhibit A; and

WHEREAS, the City has determined that the Company submitted the most advantageous proposal for providing the services set forth in the RFP and included in this Agreement; and

WHEREAS, by its _____ ("Proposal"), dated _____, attached as Exhibit B, the Company proposes, among other things, to divert ___% of the City's MSW from landfill disposal through the development of a Company-financed and owned MRF which will remove certain marketable commodities from the waste stream and will create MSW-EF, all in accordance with the terms set forth herein.

WHEREAS, the City further desires to ensure the provision of Contract Services complies with all Applicable Laws and is reliable, cost-effective, environmentally sound, and meets the City's goals of economic development; and

WHEREAS, in order to effectuate the WR&R Project goals, the City and the Company desire to enter into this Agreement; and

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Company agree as follows:

ARTICLE I

BACKGROUND AND PURPOSE, SCOPE OF SERVICES, AND DEFINITIONS

SECTION 1.1 BACKGROUND AND PURPOSE. The Company agrees to design, permit, and build, own, operate and manage a WR&R Project where it will accept the City's MSW, along with other MSW sources, recover Recyclables and organic waste for recycling or other beneficial use, and produce MSW-EF, which the Company will sell as a fuel commodity. The Company agrees to accept the City's MSW at a specific cost per ton. The Company warrants that its MRF, with recovery of Recyclables and organic waste and the production of MSW-EF, will divert ___% of MSW from landfill disposal. The City agrees to provide, exclusively to the Company for as long as the Company operates its MRF, all of the City's MSW for an extensive Term at a set price, subject to Cost Adjustment Method. The City has received a letter of intent to purchase MSW-EF from the Cleveland Thermal LLC for a new company it has created, Cleveland Steam & Electric Company LLC. Cleveland Steam & Electric Company, LLC will purchase essentially all of the MSW-EF that the Company can produce from the City's MSW and other sources the Company can attract. The City desires the Company to enter into a long-term purchase agreement generally under the business arrangement outlined in the letter of intent included herein at Exhibit C.

SECTION 1.2 SCOPE OF SERVICES.

(A) General. By execution of this Agreement, the City accepts and Company agrees to be bound by the City's RFP, the Company's Proposal, the Company's Fee Proposal, attached as Exhibit D, and the mutually agreed upon Design/Build Specifications, attached as Exhibit E (1-__), and the Statement of Work and forms, attached as Exhibit F. Company is hereby hired to provide waste management services, including designing, building, owning, permitting, operating, and managing a MRF for the specific management of MSW to recover Recyclables and organics, and produce MSW-EF as the developer, owner, and operator of the WR&R Project. The Contract Services shall consist of the tasks, deliverables, and milestones set forth in this Agreement.

(B) Meetings. Company shall meet with the City during each phase of the designing, permitting, building, and operating and managing the WR&R Project and will provide a written status report on a monthly basis or as required by the City.

(C) Time is of the Essence. All provisions of this Agreement relating to the time of performance are of the essence of this Agreement. Company shall perform all Contract Services required by this Agreement within the schedules or as agreed to in writing by the City.

SECTION 1.3 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

"AD" means Anaerobic Digestion.

"AEPS" means the Advanced Energy Portfolio Standard for the City of Cleveland.

"Acceptable Waste" means MSW, C&D Waste, Organic Waste and any other Solid Waste that the MRF is permitted to accept as of the Contract Date and any other waste that the MRF is permitted to accept in the future upon mutual consent of the parties. Acceptable Waste does not include any waste included in the definition of Unacceptable Waste, except for minor quantities of Unacceptable Waste ordinarily present in MSW in amounts consistent with RCRA and other Applicable Law. Acceptable Waste does not include Source Separated Recyclable Materials.

"Affiliate" means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

"Agreement" means this Agreement between the Company and the City, as the same may be amended or modified from time to time in accordance herewith.

"Annual Processing Charge" shall be the applicable amount set forth in the table included in Section 15.1(C).

"Applicable Law" means any law, rule, regulation, requirement, guideline having the force of law, permit, Governmental Approval, ordinance or order, of any federal, state or local agency, court or other governmental body having jurisdiction, applicable from time to time to the design, acquisition, construction, equipping, financing, permitting, ownership, possession, shakedown, testing, operation or closure of the MRF, the management, treatment, storage or disposal of residue, byproduct or waste therefrom, the transporting of MSW or commodities or fuel generated by the MRF or any other transaction or matter contemplated in the Agreement.

"Bankruptcy Code" means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended and any similar state law relating to bankruptcy, insolvency, the rights and

remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

"Base Processing Charge" has the meaning set forth in Section 15.1(B).

"Billing Period" means each calendar month, except that (1) the first Billing Period shall begin on the earlier of the Operations Commencement Date and shall continue to the last day of such month; and (2) the last Billing Period shall end on the last day of the Term of this Agreement. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata.

"Billing Year" means a 12-month period commencing on January 1 and ending on December 31.

"Bulky Waste" means, as derived from City residents, large items of MSW such as furniture, trees, branches, stumps, other similar bulky materials which are 50 pounds or greater, and other MSW not fitting in the containers; provided that Bulky Waste shall not include any MSW that because of its size or weight cannot be processed by normal methods. Bulky Waste does not include Bulky Scrap Metal items, such as White Goods.

"Bypass Acceptable Waste" has the meaning specified in Section 10.2(A).

"C&D Waste" means Construction and Demolition debris.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

"CNG" means compressed natural gas.

"CPI" means the Consumer Price Index - All Urban Consumer Midwest as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

"Capital Costs" means the _____.

"Capital Modification" means any material change, alteration, improvement, upgrade, replacement, or modification of the MRF or the Company Assets, or any installation or replacement of new equipment or systems or other property at the MRF.

"City" means City of Cleveland, Ohio.

"City Indemnitee" has the meaning specified in Section 17.3.

"Commercial MSW" means all types of MSW generated by stores, offices, restaurants, warehouses, governmental buildings, and other non-manufacturing activities, excluding residential waste and industrial waste.

"Company" means _____, a _____ organized and existing under the laws of the State of _____, and its permitted successors and assigns.

"Company Assets" means the facilities and equipment to be designed, permitted, financed, owned, constructed, installed, operated and maintained and all related assets and appurtenances owned by the Company pursuant to this Agreement including the MRF and any related facility utilized for the Contract Services set forth in this Agreement.

"Contract Date" means the date first written above.

"Contract Services" means the Design/Build Work and the Management Services.

"Contract Standards" means the terms, conditions, methods, techniques, requirements, practices and standards imposed or required to be met by the Company in the performance of the Contract Services by: (1) Applicable Law (including applicable permits); (2) the Design and Construction Requirements; (3) the Performance Guarantees; (4) Good Engineering and Construction Practice; (5) Good Industry Practice; (6) applicable manufacturers specifications; (7) applicable Insurance Requirements; (8) applicable operation and maintenance manuals; and (9) any other standard, term, condition, method, technique, practice or requirement specifically provided in this Agreement to be observed by the Company.

"Contract Year" means a Billing Year, the 12-month period commencing on January 1 and ending on December 31.

"Cost Adjustment Method" means the adjustment of unit prices for hauling and/or processing of materials under this Agreement for the second and subsequent years of the Term. The price may be adjusted upward or downward to reflect changes in the cost of operations by a cost adjustment calculation per service.

"Design and Construction Requirements" means the design and construction requirements for the Design/Build Improvements set forth in Exhibit __.

"Design/Build Improvements" means the Company Assets and any other improvements made on the WR&R Project Site by the Company.

"Design/Build Work" means the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company's design, engineering, permitting, financing, construction, start-up, testing, and related obligations with respect to the WR&R Project, including the MRF, all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Company's administrative, accounting, record-keeping, notification and similar responsibilities of every kind whatsoever under this Agreement pertaining to such obligations. A reference to Design/Build Work shall mean any part and all of the Design/Build Work unless the context otherwise requires.

(a) "Final Completion" means the completion of all Design/Build Work and all physical services required by, and in strict compliance with, the Agreement.

(b) "Substantial Completion" means that stage in the progression of the physical services, as approved by City in writing, when the MRF is sufficiently complete in accordance with the Agreement.

"Design Documents" means all the design documents provided by the Company and approved by the City pursuant to the Contract Services including, without limitation, those for use in constructing or equipping the WR&R Project, performing the Contract Services, and the rendering of the WR&R Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Company.

"Director" means the City's Director of Public Works or his or her assignee.

"Disposal" means the proper delivery of MSW to a legal Final Disposal Point.

"Disposal Facility(ies)" means a duly-authorized MSW landfill which serves a municipal population and may be used for disposal of domestic, commercial, institutional, municipal, bulky, landscaping/land clearing, industrial, construction/demolition, tires, and dead animal wastes and certain approved special wastes in accordance with State law.

"Disposal Site" means a duly-authorized Disposal Facility that will be utilized by the Company as the Final Disposal Point for Residue or MSW, if necessary.

"Drop-off Site" means the City-approved locations for City residents to drop-off residential recyclables.

"Encumbrance" means any Lien, lease, mortgage, security interest, judgment, judicial award, attachment or encumbrance of any kind with respect to any asset of the WR&R Project.

"EPA" means the United States Environmental Protection Agency or Ohio Environmental Protection Agency, as applicable.

"Event of Default" means, with respect to the Company, those items specified in Section 16.2, and with respect to the City, those items specified in Section 16.3.

"Excess Processing Charge" means the per Ton price, subject to Cost Adjustment Method, in the amount of $_____ to be paid to the Company on a Billing Period basis by the City for the processing or disposal of Acceptable Waste above _____ Tons in a Billing Period as set forth in Article XV.

"FCA" means Fuel Cost Adjustment.

"Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents, published by the United States Office of the Federal Register, National Archives and Records Administration.

"Ferrous Metal" means that scrap material is able to be attracted to a magnet and separated for hauling to a market.

"Final Disposal Point" means a location to which Residue or MSW is delivered which is intended to be the final, legally authorized permanent point of disposition from the Hauler's perspective.

"Fiscal Year" means the annual period from January 1 to December 31.

"Force Majeure" means an extraordinary event or circumstance beyond the reasonable control of the City or the Company, exclusive of Subcontractors or other third parties, involving acts of God, strikes, lock-outs, riots, acts of war, acts of terrorism, epidemics, governmental regulations imposed after the fact, earthquakes, floods, or other disasters. Neither the City nor the Company shall be responsible for the delay in performance resulting from a Force Majeure event. The dates and times for performance shall be postponed automatically to the extent and

for the period of time that either party is prevented from performing its obligations by reason of the Force Majeure event.

"GHG" means greenhouse gases which are gases in the atmosphere that absorb and emit radiation within the thermal infrared range are is considered one or more of the following gases: carbon dioxide, methane, nitrous oxide, and ozone.

"Good Engineering and Construction Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal solid waste processing and disposal in the United States and taking into consideration good design, engineering, equipping, installation, construction and commissioning practices for solid waste processing and disposal facilities as observed in the Midwestern United States. Good Engineering and Construction Practice is not in all cases limited to a single optimum method, technique, standard and practice to the exclusion of all other generally recognized as good methods, techniques, standards and practices for such facilities observed in such region.

"Good Industry Practice" means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal solid waste processing and disposal industry in the United States and taking into consideration good operation, maintenance, repair, replacement, and management practices for solid waste processing and disposal facilities as observed in the Midwestern United States. Good Industry Practice is not in all cases limited to a single optimum method, technique, standard and practice to the exclusion of all other generally recognized as good methods, techniques, standards and practices for such industries observed in such region.

"Governmental Approvals" means all approvals, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

"Governmental Body" means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

"Guarantor" means an entity that assumes joint and several liability for the Company, or other entity serving as Guarantor and which in each case guarantees performance of the obligations of the Company under this Agreement.

"Hazardous Waste" means any waste, substance, object or material deemed hazardous or toxic under any Applicable Law including, the EPA, CERCLA, or RCRA, and any oil in quantities that require reporting and corrective efforts.

"Homeowner Drop-off Center" means a designated area at the MRF, away from the weighing facilities, where City residents may deliver residential MSW.

"Household Hazardous Waste" means any MSW generated in single-family and multi-family dwellings by a consumer, which except for the exclusion provided in 40 CFR 261.4(b)(1), would be classified as a Hazardous Waste under 40 CFR, Part 261.

"Industrial MSW" means MSW resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(a) Any industrial MSW or mixture of industrial MSWs that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in Ohio EPA regulations relating to definitions.

(b) Any inert and essentially insoluble industrial MSW, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in Ohio EPA regulations.

(c) Any other combination of industrial MSWs.

"Initial Security" has the meaning set forth in Section 18.1.

"Initial Term" means the 30-year period following Operations Commencement Date.

"Insurance Requirement" means any rule, regulation, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company

which has issued a policy of Required Insurance under this Agreement, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

"Landfill Diversion Guarantee" means the guarantee by the Company to divert ___% of all Acceptable Waste received at the MRF from disposal in any landfill as defined in Section 12.3(A).

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement or the WR&R Project and all appeals therefrom.

"Letter of Credit" means the Security Instrument provided by the Company to the City as set forth in Section 18.

"Lien" means any and every lien against the WR&R assets, the MRF, Company Assets, the Design/Build Improvements or against any monies due or to become due from the City to the Company under this Agreement, for or on account of the Contract Services, including without limitation mechanics', material men's, laborers' and lenders' liens.

"Loss-and-Expense" means any and all actual loss, liability, forfeiture, obligation, damage, delay, fine, penalty, judgment, deposit, cost, Tax, or expense, including all legal fees and costs, including attorney fees, except as explicitly excluded or limited under any provision of this Agreement.

"MRF" means the Materials Recovery Facility described in Exhibit ___ and the Company's Proposal to be designed, permitted, financed, owned, constructed, equipped, operated and maintained by the Company at _____ for the Contract Services and WR&R Project.

"MRF Acceptance Date" means the date on which the Company demonstrated that the MRF has successfully diverted ___% of all MSW delivered or available for delivery but not accepted due to Company Fault, to the MRF as measured over a ___-day period in accordance with Exhibit __ and the Company has satisfied all other MRF Acceptance Date Conditions set forth in Article IX.

"MRF Acceptance Date Conditions" has the meaning specified in Section 9.1(A).

"MRF Manager" has the meaning set forth in Section 11.2(A).

"MRF Site" means the property on which the MRF is to be located.

"MSW" or "Municipal Solid Waste" means garbage, refuse, industrial lunchroom or office waste, household waste, Yard Waste, street sweepings, park and roadside litter, and any other material resulting from the operation of residential, municipal, commercial, or institutional establishments and from community activities which are required to be disposed of in an MSW unit or treatment and processing facility, as defined in regulations adopted pursuant to Ohio Administrative Code T10.10G.0101-0108; provided, however, that MSW does not include the following: (A) radioactive waste; (B) hazardous waste as defined by federal or State law; (C) infectious waste as defined by federal or State law; (D) materials that are being transported to a facility for reprocessing or reuse, but provided, further, that reprocessing or reuse does not include incineration or placement in a landfill and complies with federal, State and local law requirements for transportation, storage and disposal; and (E) industrial waste which may include office, domestic, or cafeteria waste, managed in a privately owned MSW disposal system or resource recovery facility.

"MSW-EF" means engineered fuel derived from MSW that meets the requirements of 40 CFR part 241.3(b)(4).

"Management Services" means everything required to be furnished and done for and relating to the Company Assets pursuant to this Agreement during the Term hereof. Management Services are described in Exhibit___ and includes the receipt, management, processing and disposal of all MSW delivered to the MRF as authorized by permit as of the Contract Date, the operation and maintenance of the MRF when constructed, and the development of off-site beneficial use outlets for the MSW-EF. Management Services includes operation and maintenance of the scale houses, as well as the employment and furnishing of all labor, materials, equipment, rolling stock, supplies, tools, storage, transportation, disposal, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Company's operation, maintenance, repair, replacement, management, monitoring, leachate and ash disposal, and related obligations under this Agreement, and all of the Company's administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Agreement pertaining to such obligations.

"Monthly Progress Report" means the monthly report prepared by the Company during the Construction Period containing all the information in Exhibit ___.

"OSHA" means the Occupational Safety and Health Act of 1970, as amended.

"Operations Commencement Date" means the date that the Company has completed its Transition Period Responsibilities and commences operation of the MRF.

"Operation and Maintenance Manual" means the manual and related computer programs prepared by the Company containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Management Services, developed and maintained as required by Section 11.3 and the applicable permits.

"Operator" means any Person owning or operating a landfill, processing or recycling center, or any similar MSW disposal facility utilized by the Company in the fulfillment of responsibilities under the Contract.

"Performance Guarantees" means the guarantees of performance made by the Company specifically set forth in Article XII.

"Permits" means the applicable approvals, permits, authorizations, certifications, and licenses issued by the EPA, State, or local governmental authorities required by the Company for the operation and maintenance of the MRF.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Recyclable Materials" or "Recyclables" means material that has a known recycling potential, can feasibly be recycled, and has been diverted or removed from the MSW stream for sale, use, or reuse in compliance with all Applicable Laws.

"Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete, are collected, separated or processed and returned to use in the form of raw materials in the production of new products.

"Receiving Time" has the meaning specified in Section 10.3(A).

"Regulated Substance" means any oil, petroleum or petroleum, product and any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste, contaminated soils, or hazardous waste that is defined as such by and is regulated under any Applicable Law.

"Rejection Rights" has the meaning specified in Section 10.2(A).

"Renewal Term" has the meaning specified in Section 4.1.

"Required Insurance" means insurance policies specified in Section 17 and the RFP.

"Residue" means that portion of MSW remaining after processing of MSW for purpose of recovering Recyclable Materials and MSW-EF requiring Disposal.

"Response Action" means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance governed by CERCLA.

"Scheduled MRF Acceptance Date" means the date which is the __-month anniversary of the Operations Commencement Date.

"Scheduled Operations Commencement Date" means the date which is ___ days following the Contract Date.

"Security Instruments" means the Proposal Bond, the Performance Bond, the Letter of Credit, and the Required Insurance policies.

"Senior Supervisors" has the meaning specified in Section 11.2(B).

"Service Fee" has the meaning set forth in Article XV.

"Service Period" means the period of service starting on the Commencement Date and ending on the expiration of the Term of this Agreement, including any Renewal Term.

"Surety" means any person, firm or corporation that has executed as Surety, the Company's performance bond securing the Design/Build Work.

"Solid Waste" means Acceptable Waste and any other municipal, commercial or industrial solid waste, garbage, refuse, and other such similar and related materials, including MSW, bulky waste, rubbish, C&D Waste, White Goods, wood, and yard waste.

"Source Separated" means separated prior to disposal.

"Staffing Plan" means the staffing plan for the Management Services.

"State" means the State of Ohio.

"Subcontract" means an agreement or purchase order by the Company or a Subcontractor to the Company for any portion of the Contract Services.

"Subcontractor" means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the Company (including all Subcontractors and every sub-Subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

"T&D" means transportation and disposal.

"TPD" means tons per day.

"TPY" means tons per year.

"Tax" means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

"Term" means the Initial Operating Term and any Renewal Term.

"Termination Date" means the last day of the Term of this Agreement.

"Ton" means a short ton of 2,000 pounds.

"Unacceptable Waste" means any waste which is not permitted to be accepted by the MRF under any applicable federal, State or local laws, including, but not limited to, Hazardous Materials, biological waste and regulated medical waste.

"Unit Prices" means the cost per ton or _____, subject to Section ____.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, electricity, telephone, and telecommunications), and all piping, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"WR&R" or "WR&R Project" mean the Waste Reduction & Recycling Project as introduced in the City's RFP.

"White Goods" means residential appliances, including but not limited to, water heaters, washers, water tanks, dryers, stoves and refrigerators, provided that Freon and other refrigerants shall be properly removed and disposed of in accordance with the law prior to delivery to the Facility.

"Work" shall include the furnishing of all labor, materials, tools, equipment, incidentals, and any other action necessary for full performance of this Contract.

"Yard Waste" means compostable materials such as leaves, grass clippings, vegetable or other garden debris, shrubbery, brush and tree trimmings, typically less than four feet in length and two inches in diameter, that can be converted to compost humus. The term excludes agricultural waste, animal waste, roots, sewage sludge, stumps, and treated wood.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 COMPANY'S REPRESENTATIONS AND WARRANTIES. The Company by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, makes the following express representations to the City with respect to itself and/or its Subcontractors, who shall be referred to collectively as "Company" for purposes of this Article III.

(A) The Company is fully authorized to do business in the State, with the full legal right, power and authority to enter into and perform its obligations under this Agreement, the performance of which shall not cause Company to be in violation of any Applicable Law of contractual agreement previously entered into by the Company;

(B) Company presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with performing the services required in this Agreement. Further, Company shall not employ any person having any conflicting interest to perform the services required in this Agreement.

(C) Except as disclosed in writing and submitted to the City simultaneously with its executed Agreement, there is no legal proceeding before or by any Governmental Body pending or, to the Company's knowledge, overtly threatened or publicly announced against the Company or the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Company, or the validity, legality or enforceability of this Agreement against the Company or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

(D) The information supplied and representations and warranties made by the Company in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Company are true, correct and complete in all material respects; and

(E) Company is fully qualified to act as the design professional and Company, as the Design/Builder, is fully qualified to act as the general contractor for the Project and is, and will

remain licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Company or the WR&R Project;

(1) Company will maintain all necessary licenses, permits or other authorizations necessary to act as Company for the design and build portion as well as the owner and operator of the WR&R Project until Company's duties under this Agreement have been fully satisfied;

(2) Company has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design/Build Work and the Facility Operations in accordance with the terms of this Agreement;

(3) Prior to the execution of this Agreement, Company has visited and inspected the Project site(s) and the local conditions under which the WR&R Project is to be designed, constructed and operated, and Company has performed such tests, if any, as are necessary to determine the conditions under which the Services will be performed, and Company accepts the conditions of the Site(s) and has taken those conditions into account in entering into this Agreement;

(F) The Company warrants that it has been granted the license, where applicable, to access the proposed MRF Site for the purposes of performing reviews, engineering, analysis and such additional studies or tests as are deemed necessary by the Company prior to commencement of operations. The Company shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the City and the City Indemnitees in accordance with Section 16.3 from and against all Loss-and-Expense arising therefrom.

(1) Company assumes full responsibility for the improper acts and omissions of itself, or others employed or retained by Company in connection with the WR&R Project.

ARTICLE III

PRELIMINARY DESIGN PRINCIPLES AND DESIGN DOCUMENTS

SECTION 3.1 DESIGN PRINCIPLES.

(A) Design and Construction Requirements. The Design and Construction Requirements are intended to include the basic principles, concepts and requirements for the Contract Services but do not include the final, detailed design, plans, drawings, manuals or specifications or indicate or describe each and every item required for full performance of the Contract Services. The Company agrees to prepare, at its sole cost, all necessary complete and detailed designs, plans, drawings, manuals and specifications and to furnish and perform, all Contract Services in conformity with the Design and Construction Requirements and the final designs, plans, drawings, manuals and specifications based thereon.

(B) Standards of Workmanship and Materials. Any reference in this Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Company to furnish the same in accordance with the grades and standards therefor indicated in this Agreement. Where this Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Design and Construction Requirements, and the Design and Construction Requirements are to be interpreted accordingly.

(C) Technical Standards and Codes. References in this Agreement to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date.

(D) Cost and Expense of Performance. The Company is solely responsible for its costs and expenses incurred in performing its obligations for the Contract Services.

(E) Waiver of Certain Defenses. The Company waives its rights to assert the defenses of impracticability and impossibility of performance against any claim by the City regarding the failure to comply with its obligations under the Agreement, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or

circumstances which may be different from those assumed by the Company in entering into the Agreement and agrees that sufficient consideration for such waiver has been provided by the City.

(F) Applicability and Stringency of Contract Standards. The Company shall be obligated to comply with the Contract Standards which are specifically applicable in any particular case along with the City's Charter and ordinances. Where more than one Contract Standard applies to any particular performance obligation of the Company hereunder, each such applicable Contract Standard applies. The most stringent of the applicable Contract Standards shall govern.

SECTION 3.2 DESIGN DOCUMENTS. The design documents provided by the Company and approved by the City pursuant to the Contract Services including, without limitation, those for use in constructing or equipping the WR&R Project, performing the Contract Services, and the rendering of the WR&R Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Company.

ARTICLE IV

TERM

SECTION 4.1 INITIAL TERM. This Agreement shall become effective on the Contract Date, and shall continue in effect for 30 years following the Operations Commencement Date (the period from the Operations Commencement Date to the 30TH anniversary of the Operations Commencement Date constituting the "Initial Term") or, if renewed as provided in Section 3.2, until the last day of the renewal term (the "Renewal Term"; the Initial Term and any Renewal Term being referred to herein as the "Term"), unless earlier terminated pursuant to the termination provisions of Article __ hereof, in which event the Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The City shall have no obligation to make Service Fee payments or to provide any other compensation to the Company until after the Operations Commencement Date. The rights and obligations of the parties hereto pursuant to Sections _____hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration of this Agreement shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration.

SECTION 4.2 RENEWAL OPTION. The City shall have the option in its sole discretion to renew this Agreement, for two additional terms of ten years each (the "Renewal Term") on the same conditions as are applicable during the Initial Term hereof except that the Annual Processing Charge shall be escalated from the Contract Date to the first day of the Renewal Term in accordance with the Cost Adjustment Method on the first day of each subsequent Contract Year during the Renewal Term.

ARTICLE V

OWNERSHIP; USE AND CONDITION OF THE MRF SITE

SECTION 5.1 THIRD PARTY LICENSING. The City shall not provide a license or contract with a third party for the performance of the Contract Services after the Operations Commencement Date and during the Term hereof.

SECTION 5.2 ACCESS TO AND SUITABILITY OF THE SITE.

(A) MRF Site Suitability. The Company's agents and representatives have visited, inspected and are familiar with the MRF Site, its surface physical condition relevant to the obligations of the Company pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions; that the Company is familiar with all local and other conditions which may be material to the Company's performance of its obligations under this Agreement (including, but not limited to, transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed all information regarding the MRF Site made available by the City or documents related to the MRF Site or obtained in the course of performing its obligations hereunder and that based on the foregoing, the MRF Site constitutes an acceptable and suitable site for the Contract Services including the construction of the Design/Build Improvements in accordance herewith, and that the Company will be able to perform the Management Services at the MRF Site in accordance with the requirements of this Agreement.

SECTION 5.3 SURFACE AND SUBSURFACE CONDITIONS.

(A) Relief for Pre-Existing Environmental Conditions. The Company will perform the Contract Services so that the Company will be able to receive and process Acceptable Waste and perform all other obligations hereunder in accordance with the schedules and requirements of the Agreement; provided, however, that the Company may be afforded an extension to the Operations Commencement Date upon the discovery of Pre-Existing Environmental Conditions.

(B) Company Risk. The Company, based on the investigations of the MRF Site and other inquiries made by the Company prior to the Contract Date, which the Company acknowledges to be sufficient for this purpose, assumes the risk of all other surface and subsurface conditions at the MRF Site as they may affect the Company's performance of the Design/Build Work and

the other Contract Services, and agrees that any such other surface or subsurface condition revealed during the Design/Build Work which has such an affect shall not be a Force Majeure event.

SECTION 5.4 FINANCING THE ASSETS.

(A) Obligation of Company to Provide Financing. The Company shall arrange and effectuate the financing of all Contract Services set forth in this Agreement. The Company specifically acknowledges that the inability of the Company to obtain financing for the Company Assets as required hereunder shall not constitute a Force Majeure event. The City shall have no obligation to provide financing to the Company.

(B) Responsibility for City Costs. The Company shall reimburse the City for any costs and expenses which the City incurs, at the Company's request, to assist the Company in effectuating the financing for the WR&R Project.

(C) City Rights in Connection with a Secured Borrowing. The Company acknowledged that the City has a direct and material interest in the operation of the WR&R Project in the event that a security interest in the MRF or any Company Asset is foreclosed upon or in danger of being foreclosed upon. The parties agree that any financing agreement in which the Company uses any of its assets necessary for the WR&R Project as collateral will provide that the City will be notified of any default by the Company and the City shall have the right, but not the obligation, to cure such default based upon terms and conditions to be agreed upon by the parties.

ARTICLE VI

PRIOR TO THE OPERATIONS COMMENCEMENT DATE

SECTION 6.1 COMPANY'S RESPONSIBILITIES.

(A) Obligation to Proceed. Within 180 days following the Contract Date, the Company shall proceed at its own cost and expense to exercise good faith and due diligence in order to satisfy its responsibilities, continuously, expeditiously and as soon as practicable:

(1) Governmental Approvals. The Company shall obtain all necessary Governmental Approvals to be obtained prior to the performance of the Contract Services.

(2) Financing. The Company shall complete all financing transactions necessary to finance the Company's Design/Build Work and the Management Services.

(3) Performance Bond. The Company shall obtain and deliver to the City the Performance Bond in accordance with Section 18.

(4) Letter of Credit. The Company shall obtain and deliver to the City the Letter of Credit in accordance with Section 18 as a condition precedent to reaching the Operations Commencement Date.

(5) Required Insurance. The Company shall deliver to the City certificates of insurance evidencing that the Required Insurance is in effect as a condition precedent to reaching the Operations Commencement Date and upon each anniversary of the Operations Commencement Date.

(6) Utility Accounts. The Company shall make the necessary arrangements to obtain all necessary utility accounts prior to the Operations Commencement Date.

(7) Purchase Equipment. The Company shall at its discretion and expense purchase equipment and rolling stock utilized for the WR&R Project or as is necessary to perform the Management Services.

(8) 90-Day Diligence Review. The Company shall commence and complete its 90-Day Diligence Review Period Responsibilities as described in Exhibit __ and including establishment of baseline carbon footprints, and review all areas of environmental compliance, the MRF operations and maintenance, and the WR&R Project's capital needs.

(9) Training Program. The Company shall implement the Cuyahoga Community College customized training program, as described in Exhibit __, and provide the proper training of all personnel and employees in the use of personal protective equipment and maintenance of the use of personal protective equipment to ensure a healthy and safe working environment.

(10) Screening Procedures. The Company shall submit to the City any proposed modifications to the waste screening procedures set forth in Exhibit ___ for review and comment, and the Company shall cooperate with the City in incorporating the City's comments into its procedures.

(11) Health and Safety Plan. The Company shall prepare and deliver to the City a health and safety plan as described in Exhibit ___.

(12) Documents Evidencing Required Activities. The Company shall have provided to the City copies of all filings and reports conducted, prepared or obtained with respect to or evidencing the Company's activities pursuant to this Section.

SECTION 6.2 PLANNING FOR THE OPERATIONS COMMENCEMENT DATE.

(A) Establishment of Operations Commencement Date. To be Determined.

(B) Failure to Achieve Schedule Responsibilities. If by the ____ day/month following the Contract Date (the "Scheduled Operations Commencement Date") any of the Company's responsibilities are not satisfied, the Company shall pay the City delay damages in the amount of $_____ per Ton of Acceptable Waste received at the MRF for each day of such delay. The City shall invoice the Company for such damages on a weekly basis, and payment of such invoiced amounts shall be due from the Company within three days of receipt of the invoice. Failure of the Company to pay the City such damages by the end of the third day following the receipt of an invoice shall constitute an Event of Default upon which the City may terminate the Agreement without further cure opportunity. Failure of the Company to complete its responsibilities herein within 30 days of the Scheduled Operations Commencement Date shall constitute an Event of Default and the City may terminate the Agreement without cure opportunity. If the Letter of Credit has been issued to the City, the City may draw the full amount of the Letter of Credit.

SECTION 6.3 COMPLAINCE WITH LABOR LAWS. Company shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Contract Services and

agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

(A) City's Regulations And Applicable Laws: Company shall, during the course of the Contract Services, comply with any City regulations or guidelines. Company warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Agreement, including but not limited to:

1. Participation of Local Small Business Enterprises, Minority Business Enterprises and Female Business Enterprises. [To be determined]

2. Fannie M. Lewis Cleveland Resident Employment Law [Provide Complete Regulation, if applicable.]

3. Verification of Compliance of the City [To be determined]

4. Cleveland Fair Employment Wage Law

5. Prevailing Rates of Wages [To be determined]

ARTICLE VII
DESIGN AND PERMITTING

SECTION 7.1 DESIGN WORK.

(A) Performance of the Design Work. The Company agrees to undertake, perform, and complete the designs and plans for the WR&R Project, including the MRF, and any other improvements made at the MRF (the "Design/Build Improvements") in accordance with the Contract Standards and all other provisions and requirements of this Agreement. The Company shall make design submittals to the City in accordance with the requirements of this Section.

(B) Design Risk. The Company shall have sole and exclusive responsibility for the design of the Design/Build Improvements hereunder and the preparation of all plans, specifications, drawings, blueprints and other design documents necessary or appropriate to complete the Design/Build Work. All such design documents shall comply in all respects with the Design and Construction Requirements and the other Contract Standards and shall ensure that the Design/Build Improvements are constructed to a standard of quality, durability and reliability which is equal to or better than the standard established by the Design and Construction Requirements and the other Contract Standards. The City shall have the right to review such design documents and provide comment, except for any such documents that constitute or reflect Company Proprietary Information, but shall have no disapproval rights with respect to such design documents except to disapprove design documents that are not consistent with and in conformity with the Design and Construction Requirements, the Contract Standards and the other requirements of this Agreement.

(C) Changes to the MRF. The Company acknowledges the City's material interest in each provision of the Design and Construction Requirements and agrees that Design-Build Improvements will be designed and constructed consistent with and in conformity with the Design and Construction Requirements and that no change shall be made to the Design and Construction Requirements hereto without the prior written approval of the City, which approval may not be unreasonably withheld. In addition, the Company shall not make any other improvements to the MRF without the prior written consent of the City. Neither compliance by the Company with the Design and Construction Requirements, nor review and approval by the City of the Company's design documents, shall in any way relieve the Company of the full risk and responsibility for the design of the Design/Build Improvements. Architects and engineers

engaged by the Company for the Design/Build Improvements design services shall be experienced and qualified to perform such services and shall be licensed in the State.

(D) Procedure for City Review of Design Submittals. A protocol for submission of design submittal to the City and for City review and comment shall be established promptly following the Contract Date. The Company shall submit design documents at 50% and 100% completion. The City shall use good faith efforts to complete its review of each preliminary design submittal and shall notify the Company of any concerns, problems, or perceived non-compliance with the Design and Construction Requirements within an agreed upon time. If the City does not respond within that time, the Company shall not be prohibited from submitting such design package to the appropriate Governmental Body for review and approval, provided, however, that the failure of the City to comment on any aspect of a design submittal shall in no way be deemed to be an approval or consent or in any way relieve the Company of full responsibility for the design, construction, operation and performance of the Design/Build Improvements in accordance with the Contract Standards. If the Company is notified of any such concerns, problems or perceived non-compliance with the Design and Construction Requirements, the Company may resubmit as often as it chooses, with or without modification. The parties shall schedule design review meetings as necessary. Review periods contained herein shall apply to the review by the City in its contracting capacity and not in its regulatory capacity.

(E) Documents at the Site. The Company shall maintain at an office at the MRF in a safe place one record copy of all drawings, specifications, addenda, Change Orders, graphic or written instructions, interpretations and clarifications, and all other documents related to the Design/Build Work, in good order and marked currently to record all changes made during construction, together with blueprints, general arrangements, manufacturing and shop drawings, product data and samples, and copies of all building, electrical, plumbing and public safety codes applicable to the Design/Build Work.

SECTION 7.2 PERMITTING WORK.

(A) Applications for Governmental Approvals. The Company shall make all applications and take all other action necessary to obtain, and shall obtain and maintain all Governmental Approvals, necessary to commence, continue, complete the Design/Build Work, including payment of all fees, costs and charges due in connection therewith. The Company shall manage the process of obtaining the Governmental Approvals in a manner which affords the

City a reasonable opportunity to review and comment upon such submittals and all material documentation to be submitted to or issued by any Governmental Body in connection therewith. The Company shall not take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose any cost or burden on the City or that would contravene any City policies with respect to the matters contained therein.

(B) Company Assumption of Permitting Risk. The Company explicitly assumes the risk of obtaining, maintaining and compliance with all Governmental Approvals that are required for the Design/Build Work and to operate the MRF, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body. The Company will be responsible for responding to any notices of violation and for the payment of any fines or penalties issued by a Governmental agency or under any Governmental Approval. The Company shall promptly notify, in writing, the City of any known or expected event that the Company could reasonably be expected to lead to a suspension, revocation or notice of violation under any Government Approval.

ARTICLE VIII

CONSTRUCTION OF THE DESIGN/BUILD IMPROVEMENTS

SECTION 8.1 AGREEMENT TO CONSTRUCT.

(A) Commencement of Construction. The Company shall proceed with diligence to accomplish all things necessary to commence construction of the Design/Build Improvements and shall cause the Design/Build Improvements to be completed in order to enable the Company to comply with applicable schedules contained in this Agreement. All excavated soil and other debris or waste generated from the Design/Build Work shall be used or disposed of properly by the Company at its expense. Subcontracts entered into by the Company for the construction of the Design/Build Improvements shall neither supersede nor abrogate any of the terms or provisions of this Agreement.

(B) Construction Practice. The Company shall perform the Design/Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design/Build Work as required by this Agreement.

(C) Compliance With Contract Standards. In designing, constructing, starting up and testing the Design/Build Improvements, the Company shall comply with the Contract Standards.

(D) Limitation on City Liability. If the Company shall claim to have sustained delays due to a Force Majeure event, the Company shall be entitled only to an extension of time as a result of such delay and shall not be entitled to any payment from the City or adjustment to its Annual Processing Charge.

(E) Warranties. The Company warrants to the City that the structures, improvements, fixtures, machinery, equipment and materials incorporated in the Design/Build Improvements, will be new, of recent manufacture, of good quality, free from faults and defects, suitable for its intended purpose and in conformity with the Design and Construction Requirements and the Contract Standards.

(F) Payment of Costs. The Company shall pay directly all costs and expenses of the Design/Build Work of any kind or nature whatsoever.

(G) As-Built Drawings. The Company shall complete as-built drawings for all the Design/Build Improvements. The Company shall deliver two copies of as-built drawings (which shall redact any Company Proprietary Information) to the City.

(H) Sole Responsibility and Liability. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Design/Build Improvements hereunder.

SECTION 8.2 DESIGN REVIEW, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observations and Design Review Protocol. During the progress of the Design/Build Work, the Company shall afford the City, the regulatory agency representatives, and all City consultants a reasonable opportunity for observing all Design/Build Work at the MRF. The City representatives shall comply with all reasonable safety and other rules and regulations applicable to presence in or upon the site or the Design/Build Improvements, and shall not interfere with the Company's performance of any Design/Build Work. The City's representatives and consultants shall conform to non-disclosure requirements of this Agreement concerning Company Proprietary Information obtained during any such observations exclusive of any federal or state law enforcement agents official request for information regarding the WR&R Project or any other request subject to law or regulatory policy.

(B) Tests. The Company shall conduct all tests of, the Design/Build Work (including shop tests) or inspections required by the Contract Standards.

(C) Certificates and Reports. The Company shall secure and deliver to the City promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, or approvals with respect to the Design/Build Work as and when required by the Contract Standards. The Company shall provide to the City, immediately after the receipt thereof, copies of any notice of default or noncompliance received by the Company under or in connection with any Governmental Approval, subcontract, or other transaction agreement pertaining to the Design/Build Work.

(D) Monthly On-Site Meetings and Progress Reports. During the construction, the Company and the City shall conduct construction progress meetings in accordance with Exhibit __. Such meetings shall take place at the MRF. A monthly progress report containing all relevant information shall be prepared by the Company and provided to the City at least five days prior to each monthly meeting.

SECTION 8.3 PERSONNEL.

(A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's employees and all Subcontractors. All persons engaged by the Company for Design/Build Work shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design/Build Work. All firms and personnel performing Design/Build Work, including Subcontractors, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Company Construction Superintendent. The Company shall designate an employee or representative of the Company as the Company's full-time Company construction superintendent general contractor or construction manager (the "Company Construction Superintendent"), who shall be present at the MRF with any necessary assistants on a full-time basis when the Company or any Subcontractor is performing the Design/Build Work.

SECTION 8.4 COMMUNITY BENEFITS. The Company shall use good-faith efforts to obtain the commitment of contractors, subcontractors and design professionals performing the Design/Build Work to provide contract opportunities for MBE, FBE, and CSB contractors and design professionals as provided in Chapter 187 of the Codified Ordinances of Cleveland, Ohio, 1976, and resident employment as provided in Chapter 188 of the Codified Ordinances of Cleveland, Ohio, 1976. The goals shall be ten percent (10%) MBE participation, seven percent (7%) FBE participation and fourteen percent (14%) CSB participation. For subsequent maintenance and repair work, the goals for MBE, FBE and CSB participation shall be fixed by the City's Director of Equal Opportunity in consultation with the Company or its designee prior to commencement of the work with an aggregate goal for all MBE, FBE and CSB participation of thirty percent (30%). City resident employment for the Design/Build Work shall be twenty percent (20%). The Company shall submit or cause to have submitted monthly reports to the City's Office of Equal Opportunity regarding Subcontractor and City resident utilization in the making of the Design/Build Work in a format acceptable to the City's Director of Equal Opportunity. The Company further agrees a) to comply with the Ohio prevailing wage law in the performance of the Design/Build Work; and b) to use good-faith efforts to reduce the environmental impact of the Design/Build Improvements and their operations by promoting green building initiatives.

ARTICLE IX
COMPANY ASSETS ACCEPTANCE DATES

SECTION 9.1 MRF ACCEPTANCE DATE CONDITIONS.

(A) Conditions. The following conditions shall constitute the "MRF Acceptance Date Conditions," each of which must be satisfied in all material respects by the Company in order for the MRF Acceptance Date to occur:

(1) Achievement of Test Standards. The Company shall have completed all applicable tests set forth in Exhibit __ and such test shall have demonstrated that the MRF has met the testing standards set forth in Exhibit ___;

(2) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law which are necessary for the continued routine operation of the MRF shall have been duly obtained and shall be in full force and effect and all conditions to the commencement of operations contained therein shall have been satisfied. Certified copies of all such Governmental Approvals, to the extent not in the City's possession, shall have been delivered to the City;

(3) Vehicle Traffic Plan. The Company has prepared a vehicle access and traffic plan for the MRF acceptable to the City;

(4) As-Built Drawings. The Company shall have delivered to the City two copies of a final and complete reproducible set of as-built drawings, in a size and form required by the City, excluding any Proprietary Information. Such as-built drawings shall include one mylar copy. The Company shall also provide an electronic file in AutoCad/DXF format to the extent drawings are prepared in such format; and

(5) Required Insurance. The Company shall deliver to the City certificates of insurance evidencing that the Required Insurance is in effect with respect to the MRF.

(B) Satisfaction of Conditions. Upon satisfaction of the MRF Acceptance Date Conditions, the MRF Acceptance Date shall be deemed to have occurred, which shall be acknowledged by the City in writing.

(C) Delay Damages. In the event that the MRF Acceptance Date does not occur by the Scheduled MRF Acceptance Date, the Company shall pay the City a lump sum payment of $_____ immediately upon such failure and in addition shall pay delay damages in the amount of $_____ for each Ton of MSW and Recyclable Materials received at the MRF during

each day of such delay. The Company will be provided a credit against the first $_____ of daily delay damages incurred under this subsection; provided, however, in no event will the $_____ payment or any uncredited portion of the $_____ payment remaining upon the MRF Acceptance Date, be returned to the Company.

(D) Failure to Achieve Operations Commencement Date. If by the 36-month anniversary of the Operations Commencement Date, the MRF Acceptance Date has not been achieved, an Event of Default by the Company will be deemed to have occurred and the City shall thereupon have the right to terminate this Agreement upon written notice to the Company without cure opportunity. Upon any such termination, the City shall have all of the rights provided in Article XVI upon a termination of the Company for cause.

ARTICLE X
DELIVERY AND RECEIPT OF WASTE

SECTION 10.1 DELIVERY OF ACCEPTABLE WASTE BY THE CITY.

(A) Waste Delivery Commitment by City. Beginning on the Operations Commencement Date and throughout the Term of this Agreement, the City shall deliver or cause to be delivered to the MRF, the City's Acceptable Waste that the City collects on a weekly basis pursuant to the City's Codified Ordinances.

(B) Failure to Deliver Does Not Constitute Breach. Notwithstanding the City's delivery obligation set forth in Section 10.1(A), the Company expressly acknowledges that the City's failure to meet its delivery commitment shall not constitute a breach of this Agreement and the Company shall not have any right or remedy against the City in the event the City delivers less than the estimated tons of the City's Acceptable Waste in a Contract Year. Nothing set forth in this subsection is intended to provide the City relief from any Service Fee obligations required as set forth in Section 15.1.

(C) Characteristics of Waste. The City makes no representations, commitments or guarantees with respect to the nature or characteristics of the waste which will be delivered to the MRF.

(D) Charges to Customers. For the Contract Service provided herein the City shall pay the Service Fee to the Company as provided in Section 15 hereof. The Company shall operate the scale houses through which any vehicle delivering waste to the MRF must be weighed and ticketed.

SECTION 10.2 RECEIPT OF WASTE BY THE COMPANY.

(A) Receiving and Disposal of Acceptable Waste. The Company shall receive, process or dispose of at the MRF all Acceptable Waste delivered to the MRF in each Contract Year and manage any unacceptable waste received in compliance with all applicable laws; provided, however, that the Company shall not accept any load which has not been weighed, and may refuse delivery of (1) any waste delivered at hours outside the Receiving Time; and (2) Unacceptable Waste (collectively, the "Rejection Rights"). Any portion of the Acceptable Waste delivered to the MRF which the Company fails to receive, process and dispose of which the Company is not so permitted to refuse to receive, process or dispose of at the MRF is "Bypass

Acceptable Waste". The Company shall pay the City any lost revenues (i.e. tipping fees) resulting from the Company's failure to receive, process and dispose of Bypass Acceptable Waste as well as any incremental costs (in excess of the Annual Processing Charge) incurred by the City resulting from the Company's failure (the "Receiving Guarantee").

(B) Determination of Tonnage Processed. The parties shall develop a protocol for determining tonnage of Acceptable Waste received and processed, and tonnage diverted from the landfill. Such protocols shall take into consideration factors including the tonnage of Solid Waste received at the MRF, tonnage of Unacceptable Waste removed from the MRF, and tonnage of residue from the processing of Acceptable Waste that is delivered to the landfill.

(C) Weight Record. For each Billing Period, the Company shall furnish the City daily and monthly tonnage records.

(D) Screening and Removal of Unacceptable Waste. The Company shall not knowingly receive, and it shall use best reasonable efforts to prevent the receipt of, Unacceptable Waste at the MRF. The Company shall observe its obligations under the waste screening protocol set forth in Exhibit ___. The Company shall update the waste screening protocol on an ongoing basis to reflect the most prudent waste screening measures considered to be good practice in the waste disposal industry at the time, and shall cooperate in establishing and enforcing such additional procedures as may be required to assure the safe and proper conduct of drivers of delivery vehicles in the manner contemplated by this Agreement.

(E) Disposal of Segregated Unacceptable Waste. If the Company receives delivery of any Unacceptable Waste:

(1) Appropriate safety measures shall be instituted as necessary.

(2) The Company will notify the City immediately upon discovering Unacceptable Waste.

(3) The Company shall generate a written report on each discovery of Unacceptable Waste.

SECTION 10.3 RECEIVING HOURS.

(A) Receiving Time. On and after the Operations Commencement Date, the Company shall keep the MRF open for receiving Acceptable Waste (1) Monday through Saturday, except that the MRF once operational shall be open for receiving MSW (8:00 a.m. to 6:00 p.m. from Monday to Friday; 8:00 a.m. to 6:00 p.m. on Saturdays after scheduled holidays) while such facility is utilized by the Company for the receipt and processing of MSW (other than New Year's

Day, half-day on Christmas Eve, Independence Day, Thanksgiving Day and Christmas Day), and (2) during such additional hours as may be required to accommodate the usual special collection practices within the City on account of any holiday or to accommodate disposal requirements on account of a special event, a natural disaster, unusually inclement weather, or an emergency condition (the "Receiving Time"). The Receiving Time may be amended upon the completion of the MRF.

(B) Consistent Operating Rate. The Company shall perform the Management Services in an efficient manner, processing and disposing of waste at a consistent operating rate so as to avoid the back up of delivery vehicles waiting to unload waste. The Company will direct delivery vehicles to unload their waste on a first come first serve basis and will in no way provide preferential treatment to any delivery vehicles or class of delivery vehicles.

SECTION 10.4 WEIGHING RECORDS.

(A) Measurement Devices and Procedures. Each loaded vehicle shall be weighed, indicating gross weight, tare weight, date and time and vehicle identification on a weight record. The City shall have the right to monitor the Company's weighing activities.

(B) Estimates During Incapacitation. To the extent that weighing facilities are incapacitated or are being tested, the Company, subject to the City's monitoring, shall estimate the quantity of waste on the basis of truck volumes and estimated data obtained through historical information. These estimates shall take the place of actual weighing and shall be the basis for records during the scale outage.

SECTION 10.5 HAZARDOUS MATERIALS.

(A) Responsibilities. The parties acknowledge that the MRF has not been designed and is not intended to be used in any manner or to any extent as a facility for the receiving, handling, transportation, storage or disposal of Hazardous Materials. The Company shall not knowingly permit the receipt of Hazardous Materials to the MRF or the storage of Hazardous Materials at the MRF. The Company shall develop the necessary policies and rules, as amended from time to time, to comply with the industry standard or better waste screening practices and procedures. The Company shall, in the most expeditious manner possible under the circumstances, cause such Hazardous Materials to be removed from the MRF.

(B) Costs and Liabilities. The Company shall pay any and all costs and shall be solely responsible for any liabilities incurred in connection with the clean-up, removal, transportation and disposal of any toxic or Hazardous Material received or discovered at the MRF.

ARTICLE XI
OPERATION

SECTION 11.1 OPERATION GENERALLY. Following the Operations Commencement Date, the Company shall provide the Management Services through the operation and maintenance of the MRF. The Company shall operate the MRF in a good, environmentally sound, reliable, safe and workmanlike manner in accordance with the Contract Standards and shall perform the Management Services in accordance with the Contract Standards.

SECTION 11.2 SERVICE COORDINATION AND CONTRACT ADMINISTRATION.

(A) MRF Manager. The Company shall appoint a full-time manager of the MRF (the "MRF Manager") who shall be trained, experienced and proficient in the management and operation of facilities comparable to the MRF, and whose sole employment responsibility shall be managing the Company's performance of the Management Services. The MRF Manager shall be appropriately familiar with the day-to-day operation, maintenance, repair and replacement activities of the facilities so as to knowledgeably interact and communicate with the City regarding the facilities and to perform and oversee the performance of the operation of the MRF. The primary residence of the MRF Manager shall be within Cuyahoga County, Ohio. The MRF Manager shall meet with City representatives on a mutually agreed upon basis to discuss the MRF operations. The qualifications of the MRF Manager shall include maintaining all applicable licenses and certificates. The MRF Manager will train one of the MRF operations foremen to perform the MRF Manager duties in his absence.

(B) Company's Senior Supervisors. The Company shall designate a corporate official of the Company with senior supervisory responsibility from time to time for the performance of this Agreement (the "Senior Supervisor").

(C) City's Director of Public Works. The City's Director of Public Works will administer this Agreement and act as the City's liaison with the Company for the Contract Services. When this Agreement shall require any approval or consent by the City, the Director shall provide the approval or consent in writing subject to the City's Charter and ordinances.

(D) Communications and Meetings. On or before the Operations Commencement Date, the Company shall inform the City of the contact information for the Construction Superintendent, MRF Manager, and Senior Supervisors. The City shall furnish to the Company the Director's contact information. The MRF Manager and, if requested by the City, the Senior Supervisors

each shall personally attend the designated meetings with the City, and all special meetings which the City may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the MRF and this Agreement.

(E) Complaints. The Company shall designate a senior level employee to be responsible to handle complaints regarding or relating to the MRF or the Management Services. The Company shall respond in a timely and effective manner to all complaints and communications received by the Company regarding any matter related to the Management Services. The Company shall act in a cooperative, courteous, and professional manner in its dealing with the City, any MRF customers, and the general public.

(F) Damage to Customers. The Company shall be responsible for and bear all costs for damage caused to the property of City residents that utilize the MRF, such as damage to collection vehicles, which is caused by the Company's negligence or the failure of the Company to perform the Management Services in accordance with the Contract Standards.

SECTION 11.3 OPERATION AND MAINTENANCE MANUAL. The Company shall provide to the City one copy of a draft Operation and Maintenance Manual for the MRF within 90 days after the Operations Commencement Date. The Operation and Maintenance Manual shall contain a detailed description of the means and methods of properly operating the MRF. The Company shall provide the City with any of the Company's supplements or revisions to the Operation and Maintenance Manual or to the extent applicable, a new Operation and Maintenance Manual, which may be required due to the modification or design, construction and installation.

SECTION 11.4 STAFFING AND PERSONNEL TRAINING.

(A) Staffing. The Company shall staff the Management Services during the Term of this Agreement with qualified personnel who meet the licensing and certification requirements of the State, as applicable. The Company shall manage, administer, coordinate and schedule in an orderly manner all work done by Company's officers, employees, agents and Subcontractors. The Company is solely responsibility for its staff members' conduct and performance.

(B) Training. The Company shall be responsible for training all personnel to perform the Management Services in accordance with the Contract Standards. The Company shall employ certified operators as required by Ohio regulations with respect to operations. The Company

shall ensure, at its sole cost and expense, that its employees receive adequate training before their starting date of service.

SECTION 11.5 SAFETY AND SECURITY.

(A) Safety. The Company shall maintain the safety of the MRF at a level consistent with the Contract Standards. Without limiting the foregoing, the Company shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the MRF to, (a) all employees working at the MRF and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the MRF, (b) all customers and visitors to the MRF, (c) all materials and equipment under the care, custody or control of the Company on the MRF Site, and (d) other property constituting part of the Company Assets; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations and providing safety equipment; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee whose duty shall be the supervision of MRF safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State and City officials; (5) provide and operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) properly maintain all roadways within the MRF Site; (7) provide for safe and orderly vehicular movements; and (8) develop and carry out a safety program, including employee training and periodic inspections, designed to implement the requirements of this Section.

(B) OSHA. The provision of the Management Services by the Company shall at all times be in compliance with OSHA.

(C) Security. The Company shall be responsible for the security of the MRF 24 hours a day, 7 days a week, and shall maintain suitable fences, security cameras, gates and locks at the MRF. The Company shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall provide for safe and orderly vehicular movement. The Company shall be responsible for security for the entire MRF Site.

(D) Accidents. The Company shall be responsible for all injuries, accidents and other mishaps associated with its operations that are not caused by the negligence of the City. The Company shall report any accidents resulting from the performance of this Agreement to the City as soon as practicable. For purposes of this Agreement, "accident" shall include the death of any person, any personal injury resulting in hospitalization or out-patient treatment by a physician, or damage to any real or personal property.

SECTION 11.6 COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Company shall perform, or cause to be performed, all of its obligations hereunder in accordance with Applicable Law. The Company shall comply with the terms of all Governmental Approvals applicable to the MRF.

(B) Routine Inspections, and Investigations of Alleged Non-Compliance. In connection with any actual or alleged noncompliance with Applicable Law, the Company shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body; (2) attend all meetings and hearings required by any Governmental Body; (3) provide all corrective action plans, reports, submittals and documentation required by any Governmental Body; and (4) work with the City, if necessary, to provide for alternative delivery of the City's Acceptable Waste in the event the Company is unable to receive the City's Acceptable Waste.

(C) Fines, Penalties and Remediation. In the event that the Company or any Subcontractor fails at any time to comply with Applicable Law, the Company shall, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this Agreement: (1) immediately correct or cause a Subcontractor to correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Company and the City resulting therefrom; (3) pay any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all Capital Modifications and changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law; provided, however, that nothing in this Agreement is intended to effect a waiver of either party's right to administratively challenge or seek judicial review of any notice

of violation or non-compliance, imposition of any fines or penalties, or request for corrective action.

(D) No Nuisance. The Company shall keep the MRF neat, clean and substantially litter-free at all times, ensure that the operation of the MRF does not create an odor, litter, noise, fugitive dust, vector or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur, the Company shall expeditiously remedy the condition, make all Capital Modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless the City from any Loss-and-Expense relating thereto in the manner provided in Section 16.3.

SECTION 11.7 OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained by or in the name of the Company under Applicable Law in order to operate and maintain the MRF. All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Contract Services shall be paid by the Company.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Government Approvals required for the Contract Services shall be supplied and taken on a timely basis considering the requirements of Applicable Law. The data and information supplied by the Company to the City and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information.

(C) Non-Compliance and Enforcement. The Company's responsibility, subject to its rights of administrative challenge or judicial review, to comply with any Governmental Approval for the MRF is a material obligation under this Agreement.

SECTION 11.8 CITY AND VISITOR ACCESS. The Director shall have the right at any time, on a 24-hour per day, 365 days per year basis, to have immediate access to the MRF, to visit and inspect the facility and observe the Company's performance of the Contract Services without providing advance notice to the Company. The Company shall permit and facilitate access to the MRF.

SECTION 11.9 ASSET RECORDS.

(A) System Records. The Company, on and after the Operations Commencement Date, shall establish and maintain computerized information systems with respect to the operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Agreement and demonstrate compliance with the Contract Standards. The Company shall promptly provide the City, upon request, with copies of all operations and maintenance data and other information kept by the Company in its performance of the Contract Services.

(B) Record Documents. The Company shall maintain and upon request make available to the City: (1) all designs, drawings, blueprints, plans, specifications and "as-built" or record drawings and documents pertaining to the MRF, other than such documentation that constitutes Company Proprietary Information subject to Applicable Law. The Company shall keep current all such records to show any changes made by the Company in the performance of the Contract Services.

SECTION 11.10 PERIODIC REPORTS.

(A) Meetings. The Company shall be required to hold _____ meetings with the City to review all aspects of the MRF operation. The Company shall make the MRF Manager available to meet with the City during the _____ meeting.

(B) Report. The Company shall keep accurate records of all transactions connected with this Agreement including, but not limited to, all correspondence and invoices, transaction tickets, or receipts issued. The Company shall at all times maintain an accounting system that uses generally accepted accounting principles for all services rendered and materials supplied, in connection with this Agreement. The Company shall provide to the City, by the 10th day of each month, a report for the preceding month summarizing routine and extraordinary activities during the prior month and plans and schedules for future activities. The _____ report shall include those items set forth in Exhibit __ which shall include Tons received and processed, reports provided to the State regarding recycling, landfilled, operational challenges encountered, accidents, if applicable, regulatory notices received, and other reasonably requested information:

(1) Vehicle and equipment maintenance and inspection records as required;

(2) Summary of complaints submitted to the Company and the Company's response, if any;

(3) Summary of any extraordinary occurrences affecting the Company's performance, including but not limited to, occurrences affecting the MRF;

(4) Summary of regulatory inspections; and,

(5) Summary of environmental monitoring performed and related reports.

(C) Annual Operation and Maintenance Reports. The Company shall furnish the City, within 30 days after the end of each Contract Year, an annual summary of the information contained in the monthly operations reports. The Company shall also perform and report to the City, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the provision of the Management Services.

(D) Default Reports. The Company shall provide to the City, immediately after the receipt thereof, copies of any written notice of any alleged material default, breach or noncompliance received or sent under or in connection with any material contract entered into by the Company in connection with the Contract Services.

(E) Permit Communications and Reports. The Company shall provide to the City copies of all final communications and reports furnished to any Governmental Body pursuant to Section 7.2 simultaneously with their submittal to the Governmental Body.

SECTION 11.11 EMERGENCIES.

(A) Emergency Plan. Within 60 days following the Operations Commencement Date, the Company shall provide the City with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to the City and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the City and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; (3) assure the timely availability of all personnel required to respond to any emergency (no later than two hours during nights, weekends or holidays) and shall otherwise comply with this Agreement. The emergency plan

shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

(B) Emergency Action. Notwithstanding any requirement of this Agreement requiring City approval or consent to reports or submittals, if at any time the Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the MRF, or to mitigate the immediate consequences of an emergency event, then the Company shall take all such action necessary to remedy such emergency situation. The Company shall immediately notify the City of the event and the Company's response thereto. The cost of the Company's response measures shall be borne by the Company.

SECTION 11.12 UTILITIES. The Company shall be responsible for all Utilities including payment, maintenance, location and protection during operation of the MRF.

ARTICLE XII
PERFORMANCE

SECTION 12.1 PERFORMANCE GENERALLY. The Company acknowledges that the City, in serving the solid waste disposal needs of the City, is providing an essential public service, and is relying on the performance by the Company of its obligations hereunder.

SECTION 12.2 RECEIVING GUARANTEE. The Company shall comply with the Receiving Guarantee set forth in Section 10.2(A).

SECTION 12.3 LANDFILL DIVERSION GUARANTEE.

(A) Guarantee. Following the MRF Acceptance Date, the Company shall divert ___% of all Acceptable Waste received at the MRF from disposal in any landfill (the "Landfill Diversion Guarantee").

(B) Determination of Damages. Following the MRF Acceptance Date, landfill diversion will be measured by the percentage of Acceptable Waste received at the MRF that is not disposed in the landfill, on a quarterly basis. Failure to divert at least ___% of Acceptable Waste from the landfill, on a quarterly basis, will result in a payment obligation of $___ per ton of waste which should have been diverted to reach the Landfill Diversion Guarantee. The Company shall pay to the City the obligation within 30 days of the City's invoice issued at the end of each quarter. If not paid, the City may offset against subsequent Service Fee payments, provided that, if not paid within 30 days and such amount exceeds the next Service Fee installment, the City may draw upon the Letter of Credit. The Company shall be given a credit against any such damages if the diversion rate for a quarter exceeds __% or shall be reimbursed to the extent Landfill Diversion Guarantee non-performance damages had been previously incurred and paid during such Contract Year. Any resulting payment obligations or credits will be reconciled at end of the Contract Year, with any resulting payments by the Company or reimbursement by the City due at that time. Any positive credit for the Contract Year will not carry over into the next Contract Year. If the parties agree to an alternative mechanism that would firmly secure (e.g., priority, bankruptcy proof, etc.) the Company's damage payment obligations, damages will be paid annually rather than quarterly. In calculating the actual landfill diversion rate, tonnage of residue produced by the Company's operations and disposed of in the landfill shall be included.

(C) Event of Default. Following the MRF Acceptance Date, failure of the Company to achieve an annual landfill diversion rate of at least _____% of Tons of Acceptable Waste

received at the MRF shall constitute an Event of Default for which the City may terminate the Agreement without further cure opportunities, unless such failure is due to an Uncontrollable Circumstance.

SECTION 12.4 ENVIRONMENTAL GUARANTEE.

(A) Applicable Environmental, Occupational Safety, and Health Laws. The Company shall comply with all requirements of applicable environmental, occupational safety, and health laws including all permit conditions and shall pay all fines and costs associated with the Company's failure to comply with Applicable Law, and shall make all operational and capital modifications and equipment provisions necessary to achieve compliance.

(B) No Nuisance. The Company shall not create an odor, noise, vector, litter or any other nuisance condition. Upon any failure of the Company to comply with this requirement, the Company shall make all operational and capital modifications necessary to achieve compliance within 90 days.

SECTION 12.5 RIGHT OF SET-OFF. The City shall have the right to set-off any performance damages owed to the City from future Service Fees payable by the City (1) if the Company has not paid such damages within 30 days of the end of the month or quarter, as applicable, for which they were assessed, or (2) at any time in the last Contract Year.

ARTICLE XIII

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 13.1 MAINTENANCE, REPAIR AND REPLACEMENT.

(A) Ordinary Maintenance. The Company shall maintain the MRF in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards. The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the MRF and shall conduct predictive, preventive and corrective maintenance of the MRF as required by the Contract Standards. The Company shall keep maintenance records in accordance with the applicable operation and maintenance manual and the requirements of Applicable Law including all Governmental Approvals.

(B) Inspections and Cleaning. The Company shall conduct daily inspections of the MRF and Company Assets to maintain their continuous operability. The Company shall be responsible for routine and non-routine cleaning of such MRF in accordance with Contract Standards.

(C) Repair and Maintenance of the Site. The Company, in accordance with the Contract Standards, shall maintain and repair the MRF and MRF Site(s), fencing, signage, appurtenances, fixtures and grounds in good working order and in a neat and orderly condition. In addition, the Company shall maintain its property in and around the MRF in a neat, orderly and safe condition.

(D) Major Maintenance, Repair and Replacements. The Company shall be solely responsible for providing all maintenance, repairs and replacement of the machinery, equipment, vehicles, structures, improvements and all other property at the MRF, including without limitation all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature. The obligations of the Company under this Article are intended to assure that the MRF and Company Assets are fully, properly and regularly maintained, repaired and replaced in order to preserve their long-term reliability, durability, efficiency, and financing.

(E) Replacements Constituting Capital Modifications. The Company shall bear the cost and expense of all maintenance, repairs and replacements required under this Article.

SECTION 13.2 LOSS, DAMAGE OR DESTRUCTION TO THE MRF OR COMPANY ASSETS.

(A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the MRF and Company Assets from loss, damage or destruction. The Company shall immediately notify the City and the insurers of any damage or destruction to the MRF and Company Assets and as soon as practicable thereafter shall submit a full report to the City. The Company shall also submit to the City within 24 hours copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Governmental Body. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted Design/Build Work hereunder.

(B) Uninsured Costs. The Company shall provide all funds necessary to pay the costs of repairing, replacing and restoring the MRF and Company Assets in accordance with this Section and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the MRF shall be applied to pay for undertaking such repair, replacement and restoration.

ARTICLE XIV

CAPITAL MODIFICATIONS

SECTION 14.1 CAPITAL MODIFICATIONS GENERALLY.

(A) Company Obligation. As the owner of the MRF, the Company shall develop, design and implement any and all Capital Modifications for the purpose of the WR&R Project.

(B) Costs. The Company shall bear the cost and expense of all Capital Modifications and related operation, maintenance, repair and replacement costs.

(C) Notice to the City. The Company shall give the City written notice of, and reasonable opportunity to review and comment upon, any proposed Capital Modification that has the potential of any negative or material impact on the City in its interests in supplying the City's MSW to the Company, including maintaining reasonable financial reserves; the interruption of services; or material increases in the cost of the MSW delivery or the MSW-EF price.

(D) Force Majeure. Upon the occurrence of an Force Majeure event, the Company shall promptly proceed to make or cause to be made all Capital Modifications reasonably necessary to permit the Company to address the Force Majeure event and continue the Contract Services subject to any Applicable Laws.

ARTICLE XV

SERVICE FEE AND OTHER PAYMENTS

SECTION 15.1 SERVICE FEE.

(A) Compensation for All Services. The Service Fee payable to the Company for MSW or Acceptable Waste received, processed or disposed at the MRF shall be inclusive of all other services provided by the Company, including, but not limited to financing (including cost of security), designing, permitting, constructing, operating, and maintaining the MRF. The Service Fee is the only compensation the City is obligated to pay the Company. This payment obligation is not subject to change for any reason during the Initial Term. Notwithstanding the above, the City shall not be required to pay a Service Fee to the extent it has not received service hereunder (e.g. an abandonment of the MRF).

(B) Computation and Invoicing of Monthly Service Fee. The Service Fee for any Billing Period shall be the amount of $_____ (which amount will not be escalated during the Term) (the "Base Processing Charge") plus $_____ (the "Excess Processing Charge") (which amount will not be escalated during the Term) per Ton for each Ton received, processed or disposed of at the MRF in such Billing Period above _____ Tons (the "Overage"). For any Billing Period that the tonnage received and processed or disposed of is less than _____ Tons, the City will receive a reduction in subsequent monthly Service Fees in the amount of $_____ for each Ton below _____ (the "Underage") provided, however, that any such reduction shall only be to the extent of any amounts previously paid for any Overage in such Contract Year, or if the Underage exceeds the previously uncredited Overage, the City will receive a credit in the amount by which the Underage exceeds the uncredited Overage times $_____ that will carry over to the next billing cycle against any future Overage. See Exhibit ___.

(C) Computation of Annual Processing Charge. The parties shall reconcile annual payments to the Company; provided, however, in the event that the aggregate annual tonnage of Acceptable Waste received at the MRF during such Contract Year was below _____ Tons, no year-end reconciliation calculation shall be performed. The Annual Processing Charge set forth in the Table below shall be utilized for purposes of such reconciliation:

Annual Processing Charge	Aggregated Annual Tons Delivered

This Annual Processing Charge applies to all in-City generated waste. It shall also apply to out-of-City waste caused to be delivered by the City provided that such out-of-City waste (i) is predominantly Municipal Solid Waste and (ii) when added to the in-City generated waste delivered to the MRF, does not cause such aggregate quantity to exceed _____ Tons in a year.

SECTION 15.2 NO ESCALATION. No dollar amounts contained in this Article shall be subject to any escalation during the Term except as otherwise expressly set forth in Section 4.2.

SECTION 15.3 RIGHT OF SET-OFF. In the event any amounts owed to the City pursuant to this Agreement (e.g., performance delay damages) are not paid within 30 days of invoice or within 30 days of when such payments and due pursuant to the provisions of this Agreement, the City shall have the right to set-off such amounts from Service Fees.

SECTION 15.4 BILLING. Payments will be made to the Company on a Billing Period basis. The Company shall submit to the City a monthly invoice for payment for Acceptable Waste received during the preceding month and accompanied by such data as the City may reasonably require. The City shall issue payment to the Company within 60 days from receipt by to the City of request for payment.

ARTICLE XVI

BREACH, DEFAULT, REMEDIES AND DISPUTE RESOLUTION

SECTION 16.1 REMEDIES FOR BREACH. The parties agree that, except as otherwise provided for termination rights herein, (1) in the event that the Company fails to meet the Performance Guarantees hereunder, the performance damages provided for in Article XI hereof shall be the only remedies available against the Company with respect to such failure to perform (except with respect to Indemnification for third party claims brought against the City arising out of such failure to perform for which the Company is obligated to indemnify the City pursuant to the provisions of this Agreement) and (2) in the event that either party breaches any other obligation under this Agreement or makes any material misrepresentation, the other party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or the performance of such other obligation hereunder and such right to recover damages or to be reimbursed as provided herein will ordinarily constitute an adequate remedy for any breach of such other obligation or any material misrepresentation. Neither party shall have the right to terminate this Agreement for cause except after an Event of Default. In the event either party shall have the right to terminate this Agreement as provided herein, this Agreement may be terminated (except by expiration of the Term of this Agreement) only by a written instrument of termination executed by the appropriate party and delivered to the non-terminating party.

SECTION 16.2 EVENTS OF DEFAULT BY THE COMPANY.

(A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Company upon which the City, by notice to the Company, may terminate this Agreement without any notice requirement or cure opportunity:

1. Failure to Achieve Operations Commencement Date. Failure to complete the Design/Build Work within 30 days of the Scheduled Commencement Date;

2. Failure of Security Instrument. Failure to obtain and maintain any required Security Instrument or to restore the Letter of Credit to its full amount within 30 days following a draw;

3. Significant Failure of Annual Diversion. Failure to divert from landfill disposal ___% of the Acceptable Waste received at the MRF in any Contract Year following the MRF Acceptance Date;

4. Failure to Achieve MRF Acceptance Date. Failure to achieve the MRF Acceptance Date by the __-month anniversary of the Operations Commencement Date;

5. Failure to Pay Operations Commencement Delay Damages. Failure to pay Operations Commencement Date delay damages as required herein;

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Company upon which the City may terminate this Agreement, by notice to the Company subject to the conditions below:

1. Abandonment. Failure to receive and process or dispose of Acceptable Waste in accordance with the terms of this Agreement for two consecutive days, exclusive of legal holidays;

2. Insolvency. The insolvency of the Company as determined under the Bankruptcy Code;

3. Voluntary Bankruptcy. The filing by the Company of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company to the filing of any bankruptcy or reorganization petition against the Company under the Bankruptcy Code; or the filing by the Company of a petition to reorganize the Company pursuant to the Bankruptcy Code;

4. Involuntary Bankruptcy. The issuance of a court order appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, respectively, or the filing against the Company of a petition to reorganize the Company pursuant to the Bankruptcy Code;

5. Other Material Breach. Failure to perform any material obligation under this Agreement except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the City the right to terminate this Agreement for cause under this subsection unless:

(a) The City has given prior written notice to the Company stating that in its opinion a material breach exists which gives the City a right to terminate this Agreement for cause under this Section, and describing the material breach in reasonable detail; and

(b) The Company has not cured such breach within 90 days from the initial notice except that with respect to item (1) above, such cure period shall be three days.

(C) Limited Remedies Upon Company Event of Default. If this Agreement is terminated by the City for an Event of Default by the Company before the Letter of Credit is delivered to the City, the City shall be entitled to keep the Company's Initial Security and that shall be the City's sole remedy for a default under those circumstances. If this Agreement is terminated by the City for an Event of Default by the Company after the Letter of Credit is delivered to the City, the Company shall pay the City a liquidated damage payment of $_____and the City shall not be entitled to any additional remedy except for payment for damages demonstrated by the City resulting from the Company accepting anything other than Acceptable Waste into the MRF, any indemnification obligations, any amounts previously due the City including but not limited to performance damages, and any environmental remediation costs caused by the Company's operations. The City shall be entitled to immediately draw upon the Letter of Credit upon such a termination to satisfy all or part, as applicable, of the Company's termination damages.

(D) City's Right to Possess, Control and Operate the MRF.

1. If the Company's continued insolvency causes an Event of Default, prior to any termination of this Agreement, the City, subject to any cure rights of the Company, shall have the right, but not the obligation, to possess, assume control of and operate all or any part of the MRF.

2. The City shall give notice to the Company at least 12 hours in advance of exercising its rights under this subsection.

3. During any period that the City is in possession of and operating the MRF, the City may use proceeds from the Letter of Credit to reimburse the City for any and all expenses reasonably incurred by the City in taking possession of the MRF and to cause the disposal of MSW and the City shall provide the Company with an accounting of such expenses.

4. During any period that the City is in possession of and operating the MRF, the Company shall retain legal title to and ownership of the Company Assets.

5. The Company may resume operation of the MRF, upon the date on which the Company demonstrates that it has removed the ground(s) authorizing the City to operate the MRF.

6. The City's exercise of its rights hereunder to possess, control and operate the MRF shall not be deemed an assumption by the City of any liability attributable to the Company.

SECTION 16.3 EVENTS OF DEFAULT BY THE CITY.

(A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the City upon which the Company, by notice to the City, may terminate this Agreement:

1. Voluntary Bankruptcy. The filing by the City a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the City to the filing of any bankruptcy or reorganization petition against the City under the Bankruptcy Code; or the filing by the City of a petition to reorganize the City pursuant to the Bankruptcy Code;

2. Involuntary Bankruptcy. The issuance of a court order appointing a receiver, liquidator, custodian or trustee of the City, or the filing against the City of a petition to reorganize the City pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing; or

3. Insolvency. The insolvency of the City as determined under the Bankruptcy Code.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the City upon which the Company may terminate this Agreement, by notice to the City, if the City fails, refuses or otherwise defaults in its duty to pay any amount required to be paid to the Company under this Agreement within 60 days following the due date for such payment, unless such default is excused by a Force Majeure event, except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the Company the right to terminate this Agreement for cause under this subsection unless:

1. The Company has given prior written notice to the City stating that in its opinion a material breach exists which gives the Company a right to terminate this Agreement for cause under this Section, and describing the material breach in reasonable detail; and

2. The City has not cured such breach within 90 days from the initial notice.

(C) Remedies Upon City Event of Default. The right of termination provided under this Section upon an Event of Default by the City is not exclusive. If this Agreement is terminated by the Company for an Event of Default by the City, the Company shall have the right to pursue

a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement and under Applicable Law.

SECTION 16.4 PAYMENT DISPUTES. If a party disputes any amount that is payable under this Agreement, the party disputing such amount shall provide written notice to the other party of such disputed amount, together with sufficient information to enable the other party to understand the nature of the dispute. If the disputed amount is ultimately determined to be due and payable, such disputed amount shall be paid within ten business days.

SECTION 16.5 CUMULATIVE REMEDIES. Except as provided herein, the rights and remedies granted in this Agreement to the City and the Company upon an Event of Default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Agreement. No waiver of any breach or default shall be deemed or construed by a court of law or an arbitrator to constitute a waiver of any other breach or default or of any other breach or default of any of the other terms, provisions, and covenants contained herein.

SECTION 16.6 OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION.

(A) Company Obligations. Upon a termination of the Company's right to perform this Agreement, or upon the expiration of this Agreement under Section 3.1, the Company shall, as applicable:

1. stop the Contract Services on the date and as specified by the City;

2. give written notice of termination, effective as of date of termination of this Agreement, promptly under each policy of Required Insurance (with a copy of each such notice to the City);

3. take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's costs, and take no action which shall increase any amount payable to the City under this Agreement;

SECTION 16.6 NO WAIVERS. No action of the City or the Company pursuant to this Agreement (including any investigation or payment), and no failure to act shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such

party's rights, powers and remedies except by a written instrument executed by and delivered to the City and the Company. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Company under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 16.8 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other, except with respect to indemnification of Loss-and-Expenses arising from third party claims for which the Company is obligated to indemnify the City, any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages is intended to apply to only disputes and claims as between the City and the Company, and specifically is not intended to limit the scope of the indemnity provisions in this Agreement, which indemnification includes all claims by third parties irrespective of the nature thereof or the relief sought thereby.

SECTION 16.9 FORUM FOR DISPUTE RESOLUTION. All Legal Proceedings related to this Agreement or to the MRF or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in state or federal courts located in Cuyahoga County, Ohio.

ARTICLE XVII

INSURANCE, FORCE MAJEURE AND INDEMNIFICATION

SECTION 17.1 INSURANCE. The Company shall have, and maintain the Required Insurance, which shall be on an "occurrence" basis, from companies licensed to write policies in Ohio, with an A.M. Best rating of "A" or higher, and acceptable to the City. The Company shall submit Certificates of Insurance to the City to demonstrate and identify the policies providing currently effective Required Insurance coverage. The Certificates of Insurance shall indicate the type and amount of coverages, any applicable deductibles and/or self-insured retentions, the effective date and expiration date of all policies, and shall contain the following statement:

> "The insurance covered by this certificate will not be canceled or materially altered, except after 30 days' prior written notice has been received by City."

Each Certificate of Insurance shall verify that the City is included as an additional insured and the Company shall provide an original additional insured endorsement to the City from the insurer within 30 days after the signing of this Agreement.

The Company shall require its Subcontractors to obtain insurance and shall be responsible for enforcement of its Subcontractors' obligations to obtain insurance, at limits appropriate to the exposures of the Subcontractors' work.

The Company shall be solely responsible for any and all claims arising out of the operations of the Company, its Subcontractor, or any agent, servant or employee of either, and the Company shall indemnify and hold harmless the City, its officers, agents, and employees. The Company's provisions of insurance shall not diminish its obligation to indemnify the City, which obligation shall not be limited to the limits of insurance provided and shall survive the expiration or other termination of the Service Contract.

(A) The Required Insurance, at a minimum, shall include:

1. Worker's Compensation and Employers' Liability Insurance. At all times during the Term of this Agreement, the Company shall subscribe to and comply with the Workers' Compensation laws of the State of Ohio and pay such premiums as may be required and to save the City harmless from any and all liability from or under such laws. The Company shall furnish, at the time of delivery of this Agreement and at such other times as my be requested by the City, a copy of the official certificate or receipt showing the payments referred to above.

2. Employer's Liability Insurance. The Company shall procure and maintain Employers' Liability Insurance providing limits of not less than $1,000,000 applicable to claims for bodily injury by accident or disease, along with a waiver of subrogation in favor of the City.

3. Commercial General Liability Insurance. The Company shall procure and maintain Commercial General Liability Insurance covering premises and operations; products and completed operations; broad form of property damage; explosion, collapse, and underground hazards where applicable; contractual liability; and independent contractors actions or omissions. The policy shall provide combined single limit of not less than $5,000,000 per occurrence and $10,000,000 aggregate per year applicable to claims for bodily injury or property damage.

4. Automobile Liability Insurance. The Company shall procure and maintain Automobile Liability Insurance covering all owned, hired, and non-owned vehicles, for employee non-ownership, including an endorsement for transportation of hazardous materials, where applicable with a combined single limit of not less than $1,000,000 per occurrence and $5,000,000 aggregate per year to claims for bodily injury or property damage.

5. Pollution and Environmental Liability Insurance: The Company shall procure and maintain Pollution and Environmental Liability Insurance covering 1) any release from the WR&R Project Site, the operations, or the Disposal Site; 2) any pollution or contamination generated by, transported by, or arranged by the Company or its Subcontractors; 3) any release, emission or discharge requiring testing, monitoring, recovery, cleanup or other corrective actions or damages under the RCRA, CERCLA, Toxic Substances Control Act, Clean Water Act, Clean Air Act or any other applicable federal or State law, or any similar applicable statute, order, law, regulation or decree with limits of not less than $5,000,000 per occurrence and $10,000,000 aggregate per year. The environmental-related policies and provisions shall not contain a sunset clause.

6. Professional Liability, Errors and Omissions Insurance. The Company shall procure and maintain Professional Liability, Errors and Omissions Insurance covering the Company's agents, executives, officers, and employees with limits not less than $1,000,000 per occurrence and $5,000,000 aggregate per year.

7. Excess - Umbrella Liability Insurance. The Company shall procure and maintain Excess or Umbrella Liability Insurance covering commercial general liability, automobile liability, pollution liability, and professional liability of not less than $5,000,000 per occurrence.

(B) General Requirements and/or Policy Endorsements:

1. The City, including its officers and employees, shall be named as an additional insured under all Required Insurance.

2. The Company and its insurers shall provide the City's Director of Law no less than 60 days prior written notice before any insurance shall be limited in scope or coverage cancelled or non-renewed.

3. All policies of Required Insurance shall be primary insurance without any right of contribution from the City.

4. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the Term, the Renewal Term, and for five years following completion of the service provided under the Agreement.

5. The City's Director of Law may require the Company to adjust or modify its insurance coverage and/or insurance limits on any policy of the Required Insurance. If at any time the Company's insurer or coverage becomes unsatisfactory to the City's Director of Law, the Company shall immediately provide a new certificate that meets the requirements specified by the City's Director of Law.

6. Upon request by the City's Director of Law, the Company shall provide, copies of all complete policies of insurance for the Required Insurance to the Director of Law.

(C) Maintenance of Insurance Coverage. The Company shall not perform Contract Services during any period when any policy of Required Insurance pertaining to the Contract Services is not in effect. The Company shall comply with all applicable Required Insurance and take all steps necessary to assure all property, assets, and operations remain continuously insured in accordance with the requirements of this Agreement during the Term hereof. The failure of the Company to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous

insurance coverage occur, the Company shall indemnify and hold harmless the City against any Loss-and-Expense arising out of such failure. The Company's purchase of insurance to satisfy the applicable Required Insurance in no way limits, modifies, or satisfies the Company's indemnity obligations hereunder.

SECTION 17.2 FORCE MAJEURE.

(A) Relief from Obligations. Except as expressly and specifically provided under the terms of this Agreement, neither party to this Agreement shall be liable to the other for any failure to perform an obligation to the extent it results from a Force Majeure event.

(B) Notice and Mitigation. The party that asserts a Force Majeure event shall notify the other party by telephone or facsimile, on or promptly after the date the party experiencing such event first knew of the commencement thereof, followed within seven days by a written description of: (1) the Force Majeure event and the cause thereof (to the extent known); and (2) the date the Force Majeure event began, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of a Force Majeure event, the affected party shall also provide the other party with a description of its estimated impact on the obligations of such party under this Agreement. The affected party shall also provide prompt written notice of the cessation of such event. Whenever a Force Majeure event occurs, the party claiming to be adversely affected thereby shall, as promptly as possible, use all reasonable efforts to eliminate the cause thereof, mitigate any damage therefrom, and resume full performance under this Agreement. The party claiming to be adversely affected by a Force Majeure event shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the event reasonably requested by the other party.

(C) Conditions to Performance and Schedule Relief. If and to the extent that a Force Majeure event interferes with or delay a party's performance, and the party has given timely notice as required by this Section, the party shall be entitled to relief from its performance obligations, or an extension of schedule which properly reflects the interference with performance, or the time lost as a result thereof, in each case only to the minimum extent reasonably forced on the party by the event, and the party shall perform all other obligations.

(D) No Price Relief. The Company shall not be entitled to any adjustment to the Service Fee or any other payment as a result of a Force Majeure event.

SECTION 17.3 INDEMNIFICATION. The Company shall indemnify, defend and hold harmless the City, and its officers, directors, representatives, agents and employees (each, a "City Indemnitee"), from and against (and pay the full amount of) any and all Loss-and-Expense arising from (1) any failure by the Company to perform its obligations under this Agreement; (2) the negligence or willful misconduct of the Company or any of its officers, directors, employees, representatives, agents or Subcontractors in connection with this Agreement; (3) Company Fault; or (4) the performance of the Company's obligations under this Agreement. The Company shall also indemnify the City as and to the extent provided elsewhere in this Agreement. The Company's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Company. The Company shall not, however, be required to reimburse or indemnify any City Indemnitee for any Loss-and-Expense to the extent caused by the negligence or willful misconduct of any City Indemnitee. A City Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the City Indemnitees only and shall not establish, of themselves, any liability to third parties. This indemnification obligation shall include, but is not limited to, all claims against the City by a current or former officer, director employee, representative or agent of the Company, or any Subcontractor, and the Company expressly waives all immunity and limitation on liability under any Worker's Compensation act, disability benefit act, employee benefit act or any other Applicable Law of any jurisdiction which would otherwise be applicable in the case of such a claim with respect to the Company's obligations to the City under this Section. The provisions of this Section shall survive termination of this Agreement.

(A) Indemnity for Subcontractor Claims. No Subcontractor shall have any right against the City for labor, services, materials or equipment furnished for the Contract Services. The Company's indemnity obligations under Section16.3 shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services.

ARTICLE XVIII
SECURITY FOR PERFORMANCE

SECTION 18.1 INITIAL SECURITY. As of the Contract Date, the Company has authorized the City to convert the $_____ from the Company's Proposal security (see Exhibits A-B), to security for the Company's obligations hereunder (the "Initial Security") until the Company substitutes such security with the Letter of Credit. In the event of a termination by the City due to an Event of Default prior to the substitution of the Letter of Credit, such Initial Security shall be forfeited to the City. Upon delivery of the Letter of Credit to the City, the City shall return the Initial Security to the Company within three business days.

SECTION 18.2 PERFORMANCE BOND. Prior to commencing any Design/Build Work, the Company shall provide a payment and performance bond in the amount of the Capital Cost under this Agreement.

SECTION 18.3 LETTER OF CREDIT.

(A) Terms and Purpose. As a condition to the Operations Commence Date, the Company shall deliver to the City, and during the Term hereof, the Company shall maintain an annually renewable, irrevocable direct pay letter of credit issued by a U.S. bank whose long-term debt is rated "A" or better by either Rating Service and which maintains a banking office in the State (the "Letter of Credit"). The Letter of Credit shall be in the stated amount of approximately 25% of the projected annual service fees the City would pay to the Company, subject to CPI escalation per year in the Renewal Term. The Letter of Credit shall be solely for the protection of the City in the following respects:

1.

2.

3.

The attorney-in-fact who signs a Letter of Credit for purposes of this Agreement must file with the City a certified copy of his power of attorney to include the effective date. The Letter of Credit shall be continuously renewed, extended or replaced so that it remains in effect until 180 days after the Termination Date, and shall be issued in a form acceptable to the Director of Finance. The City shall be authorized under the Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank that the drawing conditions described in

subsection (B) of this Section have occurred. The Letter of Credit shall permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to 30 days of its expiration. The Letter of Credit shall be replenished to its original face amount within 30 days after any drawing thereon. The Letter of Credit shall serve as security for the performance of the Company's obligations hereunder, and the stated amount thereof shall in no way limit the amount of damages to which the City may be entitled for any Company Event of Default hereunder.

(B) Conditions to Drawing. It shall be a condition to the right of the City to draw on the Letter of Credit, other than a draw based on a failure to renew, extend or replace the Letter of Credit or based on an Event of Default that: the City (1) has given the Company written notice of a breach of this Agreement, whether or not such breach constitutes an Event of Default, and attached a copy of its good faith assessment of the damages the City has suffered or the liquidated damages provided for herein, as a result of such breach, and (b) the Company has not paid such amounts within 15 days of receiving such notice, in which case the City shall have a right to draw the amount of the damages so assessed, or (2) has given the Company a notice of termination based on an Event of Default, in which case the City shall have the right to draw the entire stated amount of the Letter of Credit.

SECTION 18.4 COST OF PROVIDING SECURITY FOR PERFORMANCE. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company's obligations hereunder shall be borne by the Company without reimbursement from the City.

ARTICLE XIX
MISCELLANEOUS PROVISIONS

SECTION 19.1 COMPANY BUSINESS. The Company agrees that its business conducted on the MRF Site will be limited to that contemplated by this Agreement (but including the sale or beneficial use of commodities or fuels generated from the MRF) and it will not engage in activities or incur liabilities on the MRF Site other than in connection with the Company's performance of this Agreement and the transactions contemplated hereby, unless otherwise agreed to in writing by the City.

SECTION 19.2 COMPANY AND INDEPENDENT CONTRACTOR. Company shall be and remain an independent contractor with respect to all services performed hereunder.

(A) No Franchise. This Agreement constitutes a contract for the Contract Services and nothing contained or implied herein shall constitute or be construed as a franchise.

(B) No Joint Venture. The City is not a partner or joint venture of the Company in the construction of any improvements or the operation of the MRF or any business conducted at the MRF. Neither the City nor the Company has any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other or to bind the other in any manner whatsoever except as expressly provided otherwise in this Agreement.

(C) No Third-Party Rights. This Agreement is exclusively for the benefit of the City and the Company and shall not provide any third parties with any privity of contract or remedy, claim, liability, reimbursement, cause of action, or other rights.

SECTION 19.3 SOCIAL SECURITY ACT. Company agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment benefits, pensions and annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by Company on work performed under the terms of this Agreement as may be now or hereafter imposed under any state or federal law, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized state or federal officials; and Company also agrees to indemnify and save harmless the City from any such contributions or taxes or liability therefor.

SECTION 19.4 TAXES, ASSESSMENTS AND FEES. The Company shall be responsible for the payment of, and shall pay before delinquent, any and all taxes, assessments fines, penalties, permit and/or license fees and any other fees assessed or levied upon the Company on any buildings, structures, machines, appliances or other improvements of any nature whatsoever, or on any interest therein, or by reason of the business or other activities of Company hereunder during Term of this Agreement. The Company further agrees not to allow such taxes, assessments or fees to become a delinquent lien.

SECTION 19.5 CAMPAIGN CONTRIBUTIONS. Company certifies that beginning on the date the contract is awarded and extending until one year following conclusion of the contract, all persons identified in Ohio Revised Code Sections 3517.13(I)(3) and 3517.13(J)(3), as applicable, are in compliance with Ohio Revised Code Sections 3517.13(I)(1) and 3517.13(J)(1).

SECTION 19.6 PROPERTY RIGHTS/INFRINGEMENT. The Company shall pay all royalties and license fees payable in connection with the performance of the Design/Build Work and the Management Services. The Company shall protect, indemnify and hold harmless the City, and any of the City Indemnitees, from and against all Loss-and-Expense, and shall defend the City Indemnitees in any Legal Proceeding arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the performance of the Design/Build Work and the Management Services, or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The provisions of this Section shall survive termination of this Agreement.

SECTION 19.7 ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY.

(A) Rights as Government Not Limited. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity, (including actions to protect health, safety and welfare or to protect the environment).

(B) No City Obligation to Issue Governmental Approvals. Nothing in this Agreement shall obligate the City to issue or approve any Governmental Approval required with respect to the MRF, the Design/Build Work or the Management Services, and the City shall not be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval. The City retains all issuance and approval rights it has

under Applicable Law with respect to such Governmental Approvals, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Agreement.

SECTION 19.8 NO ASSIGNMENT. The Company shall not assign, transfer, convey or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement or any monies due hereunder whatsoever, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the City. Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of the City to any further assignment. Any assignment of this Agreement which is approved by the City shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Agreement. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under the Agreement unless such approval specifically provides otherwise.

SECTION 19.9 BINDING EFFECT. This Agreement shall bind and inure to the benefit of and shall be binding upon the City and the Company and any assignee acquiring an interest hereunder.

SECTION 19.10 AMENDMENT AND WAIVER. This Agreement may not be amended except by a written amendment signed by the parties.

SECTION 19.11 NOTICES. All notices, consents, approvals or written communications given pursuant to the terms of this Agreement shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally recognized overnight courier service with signed verification of delivery; or (3) given electronically or by facsimile if a signed original is deposited on the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

Notices required to be given to the City shall be addressed as follows:

Primary Notice:	Copy:

Director of Public Works City of Cleveland 500 Lakeside Avenue Cleveland, Ohio 44114	Director of Law City of Cleveland 601 Lakeside Avenue, Room 106 Cleveland, Ohio 44114 Director of Public Utilities City of Cleveland 1201 Lakeside Avenue Cleveland, Ohio 44114

Notices required to be given to the Company shall be addressed as follows:

Primary Notice:	Copy [if applicable]:
[Authorized Authority] [Name of Company] [Address of Company]	[Name or Position of Authority] [Name of Company] [Address]

SECTION 19.12 EQUAL OPPORTUNITY. This Agreement is a "contract", and Company is a "consultant" within the meaning of Chapter 187 of the Codified Ordinances of Cleveland, Ohio 1976. During the Term, Company shall comply with all terms, conditions and requirements imposed on a "consultant" in the Equal Opportunity Clause, Section 187.22(b) of the Codified Ordinances, attached hereto as Exhibit __. A copy of this Equal Opportunity Clause shall be made a part of every subcontract or agreement entered into for goods or services, and shall be binding on all persons, firms and corporations with whom the Company may deal.

SECTION 19.13 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and will inure to the benefit of the successors and assigns of the respective parties hereto.

SECTION 19.14 ATTORNEY'S FEES. The parties hereto shall be responsible for their own attorney's fees in any action related to this Agreement.

SECTION 19.15 FURTHER ASSURANCES. The City and Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The City and the Company, in order to carry out this Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

SECTION 19.16 GENERAL INTERPREATION

(A) References Hereto. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

(B) Reference to Including. All references to "including" herein shall be interpreted as meaning "including without limitation".

(C) Reference to Knowledge. All references to "knowledge", "knowing", "know" or "knew" shall be interpreted as references to a party having actual knowledge.

(D) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing the singular number mean and include the plural number and vice versa.

(E) Persons. Words importing persons include firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(F) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(G) Internal Conflict or Discrepancy. In the event of an irreconcilable conflict or discrepancy between any of the terms or conditions of the main body of this Agreement and any Exhibit or Attachment, the main body of this Agreement shall govern.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist. This Agreement may be modified, amended, discharged or waived only by a written agreement signed by each party.

(I) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other

understandings and agreements among the parties with respect to such transactions, including those contained in the City's RFP, as amended or supplemented, and the Company's proposal, as amended or supplemented.

(J) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(K) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Ohio with venue in the appropriate court, located in Cuyahoga County, Ohio.

(L) Drafting Responsibility. Neither party shall be held to a higher standard than the other party in the interpretation or enforcement of this Agreement as a whole or any portion hereof based on drafting responsibility. Each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

(M) Contract Interpreted As A Whole: This Agreement is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Agreement shall be deemed to be required Contract Services as if called for in the whole Agreement and no claim for extra work shall be based upon the fact that the description of the work in question is incomplete.

(N) Agreed Interpretation of Contract Terms: When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common customary usage.

(O) Definition Of Material Breaches Not Exhaustive: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Agreement shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Agreement.

(P) Order Of Precedence: In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control: (1) as

between figures given on plans and scaled measurements, the figures shall govern; (2) as between large scale plans and small scale plans, the large scale plans shall govern; (3) as between plans and specifications, the requirements of the specifications shall govern; and (4) as between this document and the plans or specifications, this document shall govern.

SECTION 19.17 EXHIBITS. The following attached exhibits are incorporated by reference as if fully rewritten herein and made a part of this Agreement. [To be determined]

Exhibit A – City's RFP

Exhibit B – Company's Proposal

Exhibit C – Letter from Cleveland Thermal LLC

Exhibit D – Company's Fee Proposal

Exhibit E – Design/Build Documents

Exhibit F – Statement of Work and Forms

Exhibit G – Equal Opportunity Clause

Ordinance No. _____

Resolution No. _____

[SIGNATURE PAGE TO FOLLOW]

The parties have caused this instrument to be executed as of the date and year first written above

CITY OF CLEVELAND	**[NAME OF COMPANY]**
By:_____ Michael Cox Director of Public Works	By:_____ [Name of Officer and title of Officer] Taxpayer Identification No.: _____

The legal form and correctness of the
within instrument are hereby approved.

Barbara A. Langhenry
Director of Law

By:_____
Kate E. Ryan
Assistant Director of Law

Date:_____

EXHIBITS

to the
Agreement for the Waste Reduction & Recycling Project

between

CITY OF CLEVELAND

And

_____

Dated: _____

Exhibits - to be provided

EXHIBIT __— FORM LETTER OF CREDIT

_____ __, 2014

CITY OF CLEVELAND
[Address]

Ladies and Gentlemen:

1. At the request and for the account of [], a [type of entity] (the "Company"), [Name of Bank] (the "Bank") hereby establishes in your favor our direct-pay irrevocable Letter of Credit No. ____ (the "Letter of Credit"), in the amount of $_____ (the "Stated Amount"), effective immediately.

2. We hereby irrevocably authorize you to draw drafts on us at sight in accordance with the terms and conditions hereinafter set forth. The aggregate amount drawn hereunder shall not exceed the Stated Amount.

3. Unless extended by the Bank, this Letter of Credit will expire on _____, __ (the "Stated Termination Date").

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us of your sight draft, accompanied by: (i) your written and completed certificate, signed by you, in substantially the form of Annex A hereto (such certificate being your "Agreement Certificate"), in an amount not exceeding the Stated Amount, representing amounts payable to you by the Company under and pursuant to the Waste Reduction and Recycling Project Service Agreement, dated _____, between the Company and you (the "Service Agreement"); or (ii) your written and completed certificate, signed by you in substantially the form of Annex B hereto (such certificate being your "Final Certificate"), in an amount not exceeding the Stated Amount representing the maximum amount available to be drawn hereunder upon the termination of this Letter of Credit.

5. Each sight draft drawn under this Letter of Credit must bear on its face the clause "Drawn under Irrevocable Letter of Credit No. ___."

6. Demand for payment may be made by you under this Letter of Credit prior to the expiration hereof at any time during the Bank's business hours at its address at [Bank's Address] Attention: _____, on a Business Day (as hereinafter defined). As used herein the term "Business Day" means a day on which the Bank at our aforesaid office is opened for the purpose of conducting commercial banking business. We hereby agree that all sight drafts drawn under and in strict conformity with the terms of this Letter of Credit will be duly honored by us upon delivery of the sight drafts and certificates. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit, at our aforesaid office not later than 11:00 A.M. EST on a Business Day on or before the Stated Termination Date hereof, we will honor the same by 3:00 P.M. EST on the same day in accordance with your payment instructions. If we receive any of your sight drafts and certificates, all in strict conformity to the terms of this Letter of Credit at such office after 11:00 A.M. EST on a Business Day, on or before the Stated Termination Date hereof, we will honor the same not later than 1:00 P.M. EST on the next succeeding Business Day in accordance with your payment instructions. If requested by you, payment under this Letter of Credit may be made by Federal Reserve Wire Transfer of funds to your account in a bank on the Federal Reserve Wire Facility or by deposit of same day funds into a designated account that you maintain with us.

7. The Stated Amount shall be reduced automatically by the amount of each drawing hereunder.

8. This Letter of Credit is transferable in its entirety (but not in part) to your successor which you certify to us has succeeded you as beneficiary and may be successively so transferred. Transfer of this Letter of Credit to such transferee shall be effected upon the presentation to us of this Letter of Credit accompanied by a certificate in the form of Annex C attached hereto.

9. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified, _____, _____, _____, or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Service Agreement) or to which this Letter of Credit relates, except for the certificates and sight drafts referred to herein which are incorporated herein by reference; and any such reference shall not be deemed to

incorporate herein by reference any document, instrument or agreement except for such certificates and such sight drafts.

10. Only you (or a transferee as provided in paragraph 8 hereof) may make a drawing under this Letter of Credit. Upon the payment to you or your account of the amount specified in a sight draft drawn hereunder, we shall be fully discharged of our obligation under this Letter of Credit with regard to that payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with regard to that payment to you.

11. This Letter of Credit shall be governed by the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication 600 (the "UCP") and, to the extent not inconsistent with the UCP, the Uniform Commercial Code in effect in the State of Ohio. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at our address at [Bank Address] Attention: _____, specifically referring to the number of this Letter of Credit.

Very truly yours,

[Name of Bank]

By_____
Authorized Officer

ANNEX A TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING
IN CONNECTION WITH
PAYMENT OF AMOUNTS
UNDER THE SERVICE AGREEMENT

Irrevocable Letter of Credit No. __

The undersigned, a duly authorized representative of City of Cleveland (the "Beneficiary"), hereby certifies to [Name of Bank] (the "Bank"), with reference to Irrevocable Letter of Credit No. ____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to the Waste Reduction & Recycling Project Service Agreement, dated _____ (the "Service Agreement") by and between the Beneficiary and _____ (the "Company").

2. The Beneficiary is making a demand for payment under the Letter of Credit in the amount of $_____ and such amount does not exceed the Stated Amount.

3. The Beneficiary hereby certifies as follows (insert those which are applicable):

(a) The Company has materially breached the Service Agreement and, in accordance with the procedures and requirements of Section ____, the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(b) The Beneficiary has terminated the Service Agreement pursuant to Section ___ of the Service Agreement in accordance with the procedures and requirements of such Section, Section ___ and the other applicable provisions of the Service Agreement. The Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(c) The Letter of Credit will expire within 30 days, and the Letter of Credit has not been extended, renewed or replaced in accordance with Section ___of the Service Agreement.

(d) The Company has filed a petition of voluntary bankruptcy under the Bankruptcy Code, the Company has consented to the filing of any bankruptcy or reorganization petition against the Company, or the Company has filed a petition to reorganize the Company pursuant to the Bankruptcy Code, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

(e) A court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, respectively, or a petition to reorganize the Company pursuant to the Bankruptcy Code has been filed against the Company, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing, and the Beneficiary has determined that the amount set forth above represents the estimated damages suffered by the Beneficiary, not to exceed the Stated Amount.

4. Payment of the amount described hereby shall be made by wire transfer to the following account: [wire transfer instructions].

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this __ day of _____, 2014.

CITY OF CLEVELAND

By:_____
Title:_____

ANNEX B TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING
IN CONNECTION WITH
THE TERMINATION OF
THE LETTER OF CREDIT

Irrevocable Letter of Credit No. __

The undersigned, a duly authorized representative of CITY OF CLEVELAND (the "Beneficiary"), hereby certifies to [Name of Bank] (the "Bank"), with reference to Irrevocable Letter of Credit No. ____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Letter of Credit expires at the close of business on _____, _____ (the "Stated Termination Date"), which date is not more than 30 days after the date on which this certificate and accompanying sight draft are being presented.

2. The Beneficiary has not received written notice of an extension of the Stated Termination Date.

3. The amount of the sight draft accompanying this certificate does not exceed the Stated Amount of the Letter of Credit.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this ___ day of _____, ___.

CITY OF CLEVELAND

By:_____
Title:_____

ANNEX C TO LETTER OF CREDIT

TRANSFER CERTIFICATE

[Bank's Address]

Attention: _____

RE: Irrevocable Letter of Credit No. ____

Ladies and Gentlemen:

For value received, the undersigned Beneficiary hereby irrevocably transfers to:

[Name of Transferee]

[Address of Transferee]

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole right as the Beneficiary thereof, including sole rights to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

Such transferee is a permitted transferee under such Letter of Credit.

The Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

CITY OF CLEVELAND

By:_____
Title:_____

_____
(Bank)

APPENDICES

Description of the Ridge Road Transfer Site

Description of the MRF Site

Studies and reviews to be completed by the Company

Health and Safety Plan